



1997 SENATE BILL 368

November 26, 1997 - Introduced by Senators HUELSMAN and GEORGE, cosponsored by Representatives GREEN and CULLEN. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT** *to repeal* 632.485, 700.17 (2) (b) 2., 701.27 (1) (b), 701.27 (1) (d), 701.27
2 (2) (b) 2., 701.27 (3) (b), 701.27 (6) (title), 701.27 (6) (d), 701.27 (9), 851.001,
3 851.51 (title), 851.51 (3), 852.01 (1) (e), 852.01 (1) (g), 852.03 (2), 853.07 (3),
4 853.16 (title), 853.51 (2), 858.01 (2), 861.13 and 861.41 (3) and (4); **to renumber**
5 701.27 (1) (intro.), 701.27 (2) (title), 701.27 (2) (b) (title), 701.27 (2) (bm), 701.27
6 (2) (d), 701.27 (3) (title), 701.27 (3) (a) 4., 701.27 (4) (title), 701.27 (4) (c), 701.27
7 (4) (d), 701.27 (8) (title), 767.266 (title), 851.35, 853.16 (1), 853.51 (intro.) and
8 858.01 (1); **to renumber and amend** 700.17 (2) (b) 1., 701.27 (title), 701.27 (1)
9 (a), 701.27 (1) (c), 701.27 (2) (a), 701.27 (2) (b) 1., 701.27 (2) (c), 701.27 (2) (e),
10 701.27 (3) (a) (intro.), 701.27 (3) (a) 1., 701.27 (3) (a) 2., 701.27 (3) (a) 3., 701.27
11 (4) (a), 701.27 (4) (b), 701.27 (4) (e), 701.27 (5), 701.27 (6) (a), 701.27 (6) (b) (title),
12 701.27 (6) (b), 701.27 (6) (c), 701.27 (7), 701.27 (8), 767.266, 851.51 (1) and (2),
13 852.01 (1) (f), 852.05 (1), 853.03 (2), 853.11 (1) (b), 853.15 (1), 853.16 (2), 853.51
14 (1), 861.31 (1), 861.31 (4), 861.35 (1) and 861.35 (3); **to consolidate, renumber**

SENATE BILL 368

1 **and amend** 853.11 (1) (intro.) and (a); **to amend** 6.875 (1) (b), 48.92 (3), 146.34
2 (1) (j), 157.061 (7), 178.21 (3) (e), 242.01 (11), 252.15 (1) (eg), 615.03 (1) (c),
3 700.17 (2) (a), 701.20 (5) (b) 1., 702.08, 766.575 (3) (b), 766.58 (3) (f), 766.587 (6),
4 766.589 (7), 766.61 (2) (c) 2., 815.56, 851.002, 851.13, 851.27, 852.01 (1) (intro.),
5 852.01 (1) (a) 2., 852.01 (1) (b) and (d), 852.05 (2), 852.05 (3), 852.13, 853.03
6 (intro.), 853.03 (1), 853.07 (2), 853.11 (1) (title), 853.25 (2), 853.25 (4), 853.25 (5),
7 853.29, 853.50 (1), 853.50 (3), 853.55 (NOTICE) 6., 853.55 (NOTICE) 9., 853.56
8 (NOTICE) 7., 853.56 (NOTICE) 9., 853.59 (form) (a), 853.59 (form) (2) (a),
9 857.01, 857.015, 858.01 (title), 859.40, 859.41, 861.015 (1), 861.015 (3) (intro.),
10 861.015 (3) (a), 861.015 (3) (b), 861.31 (2), 861.33 (title), 861.33 (1) (a) (intro.),
11 861.33 (1) (a) 4., 861.33 (1) (b), 861.33 (2), 861.33 (3), 861.33 (4), 861.35 (title),
12 861.35 (2), 863.37 (1), 880.32 and 880.695 (1); **to repeal and recreate** 700.11,
13 700.12, 702.03 (1), subchapter II (title) of chapter 705 [precedes 705.20],
14 851.055, 851.55, 852.01 (2), 852.01 (2m), 852.03 (1), 852.03 (3), 852.03 (4),
15 852.09, 852.11, 853.05, 853.11 (2), 853.11 (3), 853.11 (3m), 853.11 (6), 853.13,
16 853.19, 853.25 (1), 853.27, 853.33, 853.35, 853.40, 853.55 (Article 3) 3.3., 853.56
17 (Article 3) 3.4., subchapter II (title) of chapter 861 [precedes 861.018], 861.02,
18 861.03, 861.05, 861.07, 861.09, 861.11, 863.11, 863.13, 895.43 and 895.435; and
19 **to create** 632.695, 700.17 (2) (am), 700.26, 701.115, 701.25, 701.26, 702.22,
20 705.09, 705.20 (3), subchapter III (title) of chapter 705 [precedes 705.21],
21 705.31, 706.105, 766.58 (3m), 767.266 (title), 767.266 (1) (b), 767.266 (2),
22 subchapter I (title) of chapter 851 [precedes 851.002], 851.035, 851.065, 851.30,
23 851.31, subchapter II (title) of chapter 851 [precedes 851.40], 851.50, 852.01 (1)
24 (f) 1., 852.01 (1) (f) 2., 852.01 (1) (f) 3., 852.03 (5) and (6), 852.05 (4), 852.10,
25 852.12, subchapter I (title) of chapter 853 [precedes 853.01], 853.03 (2) (a), (b)

SENATE BILL 368

1 and (c), 853.04, 853.11 (1) (bm), 853.32, 853.325, 853.41, subchapter II (title) of
2 chapter 853 [precedes 853.50], 853.51 (1) (bc), 853.51 (2m), chapter 854, 856.05
3 (5), 856.16, 861.018, 861.04, 861.06, 861.08, 861.10, subchapter III (title) of
4 chapter 861 [precedes 861.17], 861.21, 861.31 (1c), 861.31 (4) (a), 861.33 (1) (c),
5 861.35 (1c), 861.35 (3) (e), 861.35 (4) (a) and 861.43 of the statutes; **relating to:**
6 changes to the probate code.

Analysis by the Legislative Reference Bureau

This bill updates the probate code in light of the proposals of the 1990 uniform probate code (UPC). It does not adopt the UPC itself but draws on its general principles and language to meld the UPC to this state's situation. The bill addresses 5 general areas.

1. Implementation of the intent of the decedent

The bill reduces some of the formality that is required for will execution. For example, under current law 2 witnesses must sign the will in the presence of the testator and in the presence of each other, but under this bill the witnesses may sign individually, within a reasonable time after witnessing either the testator's signing or his or her acknowledgement of the signature or the will. Also, under current law, a witness or his or her spouse who is also a beneficiary under the will may receive an amount no greater than that which would be received under intestacy, even if the witness' participation is innocent and there is no evidence of wrongdoing. Under this bill, participation of an "interested witness" is governed by the general rules relating to undue influence; unless there is sufficient evidence of improper influence, there is no reduction in the amount that may be received.

The bill decreases the formality of some aspects of will construction. Under the traditional law of wills, a will may be interpreted only by using information contained "within the 4 corners of the document". The bill provides that evidence outside the will may be introduced to aid in its interpretation when certain rules of construction are applied.

The bill also modifies the definition of "representation", which governs the disposition of property in the event that some members of a class of relatives survive the decedent and other members of the class predecease the decedent.

2. Uniformity among the states and attention to current public expectations

With respect to intestacy, changes made primarily for updating and uniformity purposes include division of ancestors into maternal and paternal groups; limitation of the rights of remote relatives; clarification of rights when an heir is related to the decedent by 2 lines; and increased ability for a testator to disinherit relatives when part of the estate is governed by a will and part is intestate.

SENATE BILL 368

With respect to wills, changes made primarily for updating and uniformity purposes include changes in the rights of the surviving spouse if the decedent's will predates the marriage; provision of a "self-proving will" feature, which should facilitate admission of a Wisconsin will in other jurisdictions; clarification of what happens when a subsequent will or codicil does not obviously revoke the previous instrument; and codification of the doctrine of "incorporation by reference", which applies when a will seeks to include a separate document that does not itself meet the will execution requirements.

3. *Merger of rules of interpretation for probate and nonprobate transfers*

This bill merges rules of interpretation governing probate and nonprobate transfers, primarily by applying well-established probate rules of construction to nonprobate documents. These rules deal with such issues as what happens to a gift when the beneficiary does not survive, and the decedent did not make an alternate provision ("antilapse"); what happens when a specific item is left to someone but the item is not owned by the decedent ("ademption"); what happens when a specific item is left to someone and the item carries a mortgage or lien ("nonexoneration"); who qualifies for a class gift, such as a gift to "my children"; and what rules apply when a beneficiary wishes to forgo the benefits of a gift and have it go to someone else ("disclaimer"). In one case the effort to unify the law meant codifying a highly recommended drafting practice: requiring a beneficiary to survive for a specified period, in this case 5 days, in order to receive a transfer. All of these rules will apply only if a governing document fails to specify what should be done in the given situation and other evidence is inadequate to resolve the issue.

4. *Attention to the complexities of divorce and remarriage*

Wisconsin, like other states, has long had a probate rule that provides that a divorced spouse will be treated as having predeceased the decedent. The bill extends that rule to nonprobate assets and also applies the rule to relatives of the former spouse who are not also relatives of the decedent. Thus, for example, it would apply to a former stepchild but not to children born or adopted during the former marriage. Under the proposed rule, a person who wants a different result may simply provide for it in an estate plan made after the divorce; in addition, extrinsic evidence may be presented to rebut the presumption in the rule.

With respect to remarriage, the bill establishes a presumption that, subject to contrary evidence, if a person leaves property to a stepchild in the current marriage and that stepchild predeceases the decedent, the property goes to the stepchild's descendants. This is the same antilapse rule that applies to the decedent's own children.

5. *Reduction of the complexity of deferred marital property rights*

Under Wisconsin's marital property act, each spouse has a one-half interest in all property that is acquired from income through work or investments. However, many Wisconsin couples have deferred marital property: income earned (and the assets acquired therefrom) while the spouses were married but during a period when the act did not apply, either because one or both spouses lived in a different state or because the spouses lived in Wisconsin before the act became effective in 1986. At the death of a spouse, the current probate code includes separate elections for

SENATE BILL 368

probate and nonprobate deferred marital property with complex calculations for each. The bill, which is grounded in the elective share provisions of the UPC, replaces the current system with a single deferred marital property election that is simpler to use and that more closely tracks the partnership theory of marriage on which the marital property act is based.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 6.875 (1) (b) of the statutes is amended to read:

2 6.875 (1) (b) “Relative” means a spouse or individual related within the 1st, 2nd
3 or 3rd degree of kinship under s. 852.03 (2), 1995 stats.

4 **SECTION 2.** 48.92 (3) of the statutes is amended to read:

5 48.92 (3) Rights of inheritance by, from and through an adopted child are
6 governed by ~~s. 851.51~~ ss. 854.20 and 854.21.

7 **SECTION 3.** 146.34 (1) (j) of the statutes is amended to read:

8 146.34 (1) (j) “Relative” means a parent, grandparent, stepparent, brother,
9 sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship
10 as computed under s. 852.03 (2), 1995 stats. This relationship may be by
11 consanguinity or direct affinity.

12 **SECTION 4.** 157.061 (7) of the statutes is amended to read:

13 157.061 (7) “Family member” means a spouse or an individual related by blood,
14 marriage or adoption within the 3rd degree of kinship as computed under s. 852.03
15 (2), 1995 stats.

16 **SECTION 5.** 178.21 (3) (e) of the statutes is amended to read:

17 178.21 (3) (e) A partner’s right in specific partnership property is not subject
18 to elective rights under s. 861.02 (1) ~~or 861.03~~ of a surviving spouse or to allowances
19 to a surviving spouse, heirs, or next of kin.

SENATE BILL 368

1 **SECTION 6.** 242.01 (11) of the statutes is amended to read:

2 242.01 (11) "Relative" means an individual related by consanguinity within the
3 3rd degree of kinship as computed under s. 852.03 (2), 1995 stats., a spouse or an
4 individual related to a spouse within the 3rd degree as so computed, and includes an
5 individual in an adoptive relationship within the 3rd degree.

6 **SECTION 7.** 252.15 (1) (eg) of the statutes is amended to read:

7 252.15 (1) (eg) "Relative" means a spouse, parent, grandparent, stepparent,
8 brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree
9 of kinship as computed under s. 852.03 (2), 1995 stats. This relationship may be by
10 consanguinity or direct affinity.

11 **SECTION 8.** 615.03 (1) (c) of the statutes is amended to read:

12 615.03 (1) (c) A natural person who issues such an annuity to a relative by blood
13 or marriage within the ~~third~~ 3rd degree of kinship as computed according to s. 852.03
14 (2), 1995 stats.

15 **SECTION 9.** 632.485 of the statutes is repealed.

16 **SECTION 10.** 632.695 of the statutes is created to read:

17 **632.695 Applicability of general transfers at death provisions.** Chapter
18 854 applies to transfers at death under life insurance policies and annuities.

19 **SECTION 11.** 700.11 of the statutes is repealed and recreated to read:

20 **700.11 Interests in "heirs" and the like.** (1) If a statute or governing
21 instrument, as defined in s. 854.01, specifies that property is to be distributed to, or
22 a future interest is to be created in, a designated individual's "heirs", "heirs at law",
23 "next of kin", "relatives" or "family" or a term that has a similar meaning, or if a class
24 gift in favor of "descendants", "issue" or "heirs of the body" does not specify the

SENATE BILL 368

1 manner in which the property is to be distributed among the class members, the
2 property is distributed according to s. 854.22.

3 (2) The common law doctrine of worthier title is abolished under s. 854.22 (3).
4 Situations in which the doctrine may have applied are governed by s. 854.22 (1).

5 **SECTION 12.** 700.12 of the statutes is repealed and recreated to read:

6 **700.12 After-born persons included in class gift.** With respect to
7 membership in a class under a class gift, the status of a person who was born after
8 the membership in the class was determined is governed by s. 854.21 (5).

9 **SECTION 13.** 700.17 (2) (a) of the statutes is amended to read:

10 700.17 (2) (a) Each of 2 or more joint tenants has an equal interest in the whole
11 property for the duration of the tenancy, irrespective of unequal contributions at its
12 creation. On the death of one of 2 joint tenants, the survivor becomes the sole owner;
13 on the death of one of 3 or more joint tenants, the survivors are joint tenants of the
14 entire interest, ~~except that if.~~ If a survivor disclaims under s. 701.27 (2) (b) 1. 854.13
15 (2) (b), the joint tenancy is severed as of the date of death with respect to the
16 disclaimed interest.

17 **SECTION 14.** 700.17 (2) (am) of the statutes is created to read:

18 700.17 (2) (am) Survivorship under par. (a) is governed by s. 854.03 (2).

19 **SECTION 15.** 700.17 (2) (b) 1. of the statutes is renumbered 700.17 (2) (b) and
20 amended to read:

21 700.17 (2) (b) If a joint tenant unlawfully and intentionally kills another joint
22 tenant of the same property, the disposition of the deceased joint tenant's interest in
23 the joint tenancy is severed so that the interest of the decedent passes as the
24 decedent's property and the killer has no right of survivorship as to that property
25 governed by s. 854.14.

SENATE BILL 368

1 **SECTION 16.** 700.17 (2) (b) 2. of the statutes is repealed.

2 **SECTION 17.** 700.26 of the statutes is created to read:

3 **700.26 Applicability of general transfers at death provisions.** Chapter
4 854 applies to a transfer at death under an instrument of transfer.

5 **SECTION 18.** 701.115 of the statutes is created to read:

6 **701.115 Future interests in revocable trusts.** (1) Unless a contrary
7 intention is found, if a person has a future interest in property under a revocable
8 trust and, under the terms of the trust, the person has the right to possession and
9 enjoyment of the property at the grantor's death, the right to possession and
10 enjoyment is contingent on the person's surviving the grantor. Extrinsic evidence
11 may be used to show contrary intent.

12 (2) Survivorship under sub. (1) is governed by s. 854.03.

13 (3) The rights of the issue of a predeceasing beneficiary under sub. (1) are
14 governed by s. 854.06.

15 **SECTION 19.** 701.20 (5) (b) 1. of the statutes is amended to read:

16 701.20 (5) (b) 1. To legatees and devisees of specific property other than money,
17 the income from the property bequeathed or devised to them less the following
18 recurrent and other ordinary expenses attributable to the specific property: property
19 taxes (excluding taxes prorated to the date of death), interest (excluding interest
20 accrued to the date of death), income taxes (excluding taxes on income in respect of
21 a decedent, capital gains and any other income taxes chargeable against principal)
22 which accrue during the period of administration, ordinary repairs, and other
23 expenses of management and operation of the property. ~~For the purpose of this~~
24 ~~subdivision, property elected by a surviving spouse under s. 861.02 (1) is a bequest~~
25 ~~or devise to the surviving spouse.~~

SENATE BILL 368

1 **SECTION 20.** 701.25 of the statutes is created to read:

2 **701.25 Applicability of general transfers at death provisions.** Chapter
3 854 applies to transfers at death under trust instruments.

4 **SECTION 21.** 701.26 of the statutes is created to read:

5 **701.26 Disclaimers of nonprobate transfers at death.** A person may
6 disclaim, under s. 854.13, any of the following:

7 (1) An interest in a joint tenancy, upon the death of another joint tenant.

8 (2) An interest in survivorship marital property, upon the death of the other
9 spouse.

10 (3) An interest that is created by a nontestamentary instrument and
11 transferred at death, upon the death that causes the transfer.

12 **SECTION 22.** 701.27 (title) of the statutes is renumbered 854.13 (title) and
13 amended to read:

14 **854.13 (title) Disclaimer of ~~transfers under nontestamentary~~**
15 **instruments.**

16 **SECTION 23.** 701.27 (1) (intro.) of the statutes is renumbered 854.13 (1) (intro.).

17 **SECTION 24.** 701.27 (1) (a) of the statutes is renumbered 854.13 (1) (a) and
18 amended to read:

19 854.13 (1) (a) “Beneficiary under a ~~nontestamentary~~ governing instrument”
20 includes any person who receives or might receive property ~~or an interest in property~~
21 under the terms or legal effect of a ~~nontestamentary~~ governing instrument.

22 **SECTION 25.** 701.27 (1) (b) of the statutes is repealed.

23 **SECTION 26.** 701.27 (1) (c) of the statutes is renumbered 854.13 (1) (c) and
24 amended to read:

25 854.13 (1) (c) “Power” has the meaning designated ~~designated~~ given in s. 702.01 (4).

SENATE BILL 368

1 **SECTION 27.** 701.27 (1) (d) of the statutes is repealed.

2 **SECTION 28.** 701.27 (2) (title) of the statutes is renumbered 854.13 (2) (title).

3 **SECTION 29.** 701.27 (2) (a) of the statutes is renumbered 854.13 (2) (a) and
4 amended to read:

5 854.13 (2) (a) *In general.* A person who is a an heir, recipient of property or
6 beneficiary under a ~~nontestamentary~~ governing instrument, ~~person succeeding to a~~
7 ~~disclaimed interest created by a nontestamentary instrument, donee of a power~~
8 created by ~~nontestamentary~~ a governing instrument, appointee under a power
9 exercised by ~~nontestamentary~~ a governing instrument ~~or~~, taker in default under a
10 power created by ~~nontestamentary~~ a governing instrument, or person succeeding to
11 disclaimed property may disclaim any property ~~or interest in property~~, including
12 contingent or future interests or the right to receive discretionary distributions, by
13 delivering a written instrument of disclaimer under this section.

14 **SECTION 30.** 701.27 (2) (b) (title) of the statutes is renumbered 854.13 (2) (b)
15 (title).

16 **SECTION 31.** 701.27 (2) (b) 1. of the statutes is renumbered 854.13 (2) (b) and
17 amended to read:

18 854.13 (2) (b) Upon the death of a joint tenant ~~that occurs on or after June 7,~~
19 ~~1996~~, a surviving joint tenant may disclaim any property ~~or interest in property~~ that
20 would otherwise accrue to him or her by right of survivorship and that is the subject
21 of the joint tenancy. ~~A surviving joint tenant may disclaim the entire interest if he~~
22 ~~or she fulfills the requirements under section 2518 of the internal revenue code by~~
23 delivering a written instrument of disclaimer under this section.

24 **SECTION 32.** 701.27 (2) (b) 2. of the statutes is repealed.

25 **SECTION 33.** 701.27 (2) (bm) of the statutes is renumbered 854.13 (2) (c).

SENATE BILL 368

1 **SECTION 34.** 701.27 (2) (c) of the statutes is renumbered 854.13 (2) (d) and
2 amended to read:

3 854.13 (2) (d) *Partial disclaimer.* Property may be disclaimed in whole or in
4 part, except that a partial disclaimer of property passing by ~~nontestamentary a~~
5 governing instrument or by the exercise of a power may not be made if partial
6 disclaimer is expressly prohibited by the governing instrument or by the instrument
7 exercising the power.

8 **SECTION 35.** 701.27 (2) (d) of the statutes is renumbered 854.13 (2) (e).

9 **SECTION 36.** 701.27 (2) (e) of the statutes is renumbered 854.13 (2) (h) and
10 amended to read:

11 854.13 (2) (h) *After death.* A person's right to disclaim survives the person's
12 death and may be exercised by the person's personal representative or special
13 administrator upon receiving approval from the court having jurisdiction of the
14 person's estate after hearing upon notice to all interested persons interested in the
15 disclaimed property, if the personal representative or special administrator has not
16 taken any action which would bar the right to disclaim under sub. (7) (11).

17 **SECTION 37.** 701.27 (3) (title) of the statutes is renumbered 854.13 (3) (title).

18 **SECTION 38.** 701.27 (3) (a) (intro.) of the statutes is renumbered 854.13 (3)
19 (intro.) and amended to read:

20 854.13 (3) (intro.) The instrument of disclaimer shall do all of the following:

21 **SECTION 39.** 701.27 (3) (a) 1. of the statutes is renumbered 854.13 (3) (a) and
22 amended to read:

23 854.13 (3) (a) Describe the property ~~or interest~~ disclaimed;

24 **SECTION 40.** 701.27 (3) (a) 2. of the statutes is renumbered 854.13 (3) (b) and
25 amended to read:

SENATE BILL 368

1 854.13 (3) (b) Declare the disclaimer and the extent of the disclaimer;₂

2 **SECTION 41.** 701.27 (3) (a) 3. of the statutes is renumbered 854.13 (3) (c) and
3 amended to read:

4 854.13 (3) (c) Be signed by the disclaimant; and.

5 **SECTION 42.** 701.27 (3) (a) 4. of the statutes is renumbered 854.13 (3) (d).

6 **SECTION 43.** 701.27 (3) (b) of the statutes is repealed.

7 **SECTION 44.** 701.27 (4) (title) of the statutes is renumbered 854.13 (4) (title).

8 **SECTION 45.** 701.27 (4) (a) of the statutes is renumbered 854.13 (4) (a) and
9 amended to read:

10 854.13 (4) (a) (title) *Disclaiming a present Present interest.* An instrument
11 disclaiming a present interest shall be executed and delivered not later than 9
12 months after the effective date of the ~~nontestamentary transfer under the governing~~
13 ~~instrument, except that, for.~~ For cause shown, the period may be extended by a court
14 of competent jurisdiction, either within or after the 9-month period, for such
15 additional time as the court deems considers just. ~~The effective date of a revocable~~
16 ~~instrument or contract is the date on which the person having the power to revoke~~
17 ~~no longer has the power to revoke it or to transfer to himself, herself or another~~
18 ~~person the equitable ownership of the property or interest which is the subject of the~~
19 ~~disclaimer.~~

20 **SECTION 46.** 701.27 (4) (b) of the statutes is renumbered 854.13 (4) (b) and
21 amended to read:

22 854.13 (4) (b) (title) *Disclaiming a future Future interest.* An instrument
23 disclaiming a future interest shall be executed and delivered not later than 9 months
24 after the event that determines that the taker of the property or interest is finally
25 ascertained and his or her interest indefeasibly fixed, ~~except that, for.~~ For cause

SENATE BILL 368

1 shown, the period may be extended by a court of competent jurisdiction, either within
2 or after the 9-month period, for such additional time as the court deems considers
3 just.

4 **SECTION 47.** 701.27 (4) (c) of the statutes is renumbered 854.13 (4) (c).

5 **SECTION 48.** 701.27 (4) (d) of the statutes is renumbered 854.13 (4) (d).

6 **SECTION 49.** 701.27 (4) (e) of the statutes is renumbered 854.13 (4) (e) and
7 amended to read:

8 854.13 (4) (e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b),
9 a person whose interest in property arises by disclaimer or by default of exercise of
10 a power created by ~~nontestamentary~~ a governing instrument may disclaim at any
11 time not later than 9 months after the day on which the prior instrument of
12 disclaimer is delivered, or the date of death of the donee of the power, ~~as the case may~~
13 ~~be.~~

14 **SECTION 50.** 701.27 (5) of the statutes is renumbered 854.13 (5), and 854.13 (5)
15 (a) (intro.), 1. and 2., as renumbered, are amended to read:

16 854.13 (5) (a) *Delivery.* (intro.) In addition to any requirements imposed by the
17 ~~creating~~ governing instrument, the instrument of disclaimer is effective only if,
18 within the time specified under sub. (4), it is delivered to and received by any of the
19 following:

- 20 1. The transferor of the property ~~or interest~~ disclaimed, if living;
21 2. The personal representative or special administrator of the deceased
22 transferor of the property; ~~or,~~

23 **SECTION 51.** 701.27 (6) (title) of the statutes is repealed.

24 **SECTION 52.** 701.27 (6) (a) of the statutes is renumbered 854.13 (6) and
25 amended to read:

SENATE BILL 368

1 854.13 (6) PROPERTY NOT VESTED. The property ~~or interest~~ disclaimed under this
2 section shall be deemed considered not to have been vested in, created in or
3 transferred to the disclaimant.

4 **SECTION 53.** 701.27 (6) (b) (title) of the statutes is renumbered 854.13 (7) (title)
5 and amended to read:

6 854.13 (7) (title) DEVOLUTION IN GENERAL.

7 **SECTION 54.** 701.27 (6) (b) of the statutes is renumbered 854.13 (7) (a) and
8 amended to read:

9 854.13 (7) (a) Unless the transferor of the property or donee of the power has
10 otherwise provided, the disclaimed property ~~or interest disclaimed~~ devolves as if the
11 disclaimant had died before the decedent or before the effective date of the
12 nontestamentary transfer under the governing instrument; ~~or if.~~ If the disclaimant
13 is an appointee under a power exercised by nontestamentary a governing
14 instrument, the disclaimed property devolves as if the disclaimant had died before
15 the effective date of the exercise of the power; ~~or if.~~ If the disclaimant is a taker in
16 default under a power created by nontestamentary a governing instrument, the
17 disclaimed property devolves as if the disclaimant had predeceased the donee of the
18 power. This paragraph is subject to subs. (8), (9) and (10).

19 (b) A disclaimer relates back for all purposes to the effective date of the
20 nontestamentary decedent's death or the effective date of the transfer under the
21 governing instrument; ~~or if.~~ If the disclaimant is an appointee under a power
22 exercised by nontestamentary under a governing instrument, the disclaimer relates
23 back to the effective date of the exercise of the power; ~~or if.~~ If the disclaimant is a
24 taker in default under a power created by nontestamentary a governing instrument,
25 the disclaimer relates back to the last possible date for exercise of the power. A

SENATE BILL 368

1 disclaimer of the future right to receive mandatory distributions of income or profits
2 relates to the period stated in the disclaimer.

3 **SECTION 55.** 701.27 (6) (c) of the statutes is renumbered 854.13 (10) and
4 amended to read:

5 854.13 (10) (title) ~~FUTURE~~ DEVOLUTION OF DISCLAIMED FUTURE INTEREST. Unless
6 the instrument creating the future interest manifests a contrary intent either
7 expressly or as construed from extrinsic evidence, a future interest limited to take
8 effect in possession or enjoyment after the termination of the interest which is
9 disclaimed takes effect as if the disclaimant had died before the effective date of the
10 ~~nontestamentary governing~~ instrument or, if the disclaimant is an appointee under
11 a power exercised by ~~nontestamentary~~ a governing instrument, as if the disclaimant
12 had died before the effective date of the exercise of the power.

13 **SECTION 56.** 701.27 (6) (d) of the statutes is repealed.

14 **SECTION 57.** 701.27 (7) of the statutes is renumbered 854.13 (11), and 854.13
15 (11) (a) (intro.), 1., 2. and 3., as renumbered, are amended to read:

16 854.13 (11) (a) (title) *Method Actions that bar disclaimer*. (intro.) A person's
17 right to disclaim property ~~or an interest in property~~ is barred by the person's any of
18 the following:

19 1. ~~Assignment~~ The person's assignment, conveyance, encumbrance, pledge or
20 transfer of the property ~~or interest~~ or a contract therefor; ~~;~~

21 2. ~~Written~~ The person's written waiver of the right to disclaim; ~~or,~~

22 3. ~~Acceptance~~ The person's acceptance of the property ~~or interest~~ or benefit of
23 the property.

24 **SECTION 58.** 701.27 (8) (title) of the statutes is renumbered 854.13 (12) (title).

SENATE BILL 368

1 **SECTION 59.** 701.27 (8) of the statutes is renumbered 854.13 (12) (a) and
2 amended to read:

3 854.13 **(12)** (a) This section does not ~~abridge~~ affect the right of a person to
4 waive, release, disclaim or renounce property ~~or an interest in property~~ under any
5 other statute, the common law, or as provided in the creating instrument.

6 **SECTION 60.** 701.27 (9) of the statutes is repealed.

7 **SECTION 61.** 702.03 (1) of the statutes is repealed and recreated to read:

8 702.03 **(1)** Unless a contrary intention is found, if a governing instrument, as
9 defined in s. 854.01, creating a power of appointment expressly requires that the
10 power be exercised by any type of reference to the power or its source, it is presumed
11 that the donor's intention in requiring the reference was to prevent an inadvertent
12 exercise of the power. Extrinsic evidence may be used to show contrary intent.

13 **SECTION 62.** 702.08 of the statutes is amended to read:

14 **702.08 Disclaimer of powers.** The donee of any power may disclaim all or
15 part of the power as provided under s. ~~701.27 or 853.40~~ 854.13.

16 **SECTION 63.** 702.22 of the statutes is created to read:

17 **702.22 Applicability of general transfers at death provisions.** Chapter
18 854 applies to transfers at death under an instrument that creates or exercises a
19 power of appointment.

20 **SECTION 64.** 705.09 of the statutes is created to read:

21 **705.09 Applicability of general transfers at death provisions.** Chapter
22 854 applies to transfers at death under this subchapter.

23 **SECTION 65.** Subchapter II (title) of chapter 705 [precedes 705.20] of the
24 statutes is repealed and recreated to read:

25

CHAPTER 705

SENATE BILL 368

SUBCHAPTER II

NONPROBATE TRANSFERS AT DEATH

SECTION 66. 705.20 (3) of the statutes is created to read:

705.20 (3) Chapter 854 applies to transfers at death under this section.

SECTION 67. Subchapter III (title) of chapter 705 [precedes 705.21] of the statutes is created to read:

CHAPTER 705

SUBCHAPTER III

TRANSFER ON DEATH

SECURITY REGISTRATION

SECTION 68. 705.31 of the statutes is created to read:

705.31 Applicability of general transfers at death provisions. Chapter 854 applies to transfers at death under this subchapter.

SECTION 69. 706.105 of the statutes is created to read:

706.105 Applicability of general transfers at death provisions. Chapter 854 applies to transfers at death under a conveyance.

SECTION 70. 766.575 (3) (b) of the statutes is amended to read:

766.575 (3) (b) If within 14 business days after receiving the notice of claim the trustee receives, as purporting to support the claim, a decree, marital property agreement or proof that a legal action has been commenced, including a copy of an election filed pursuant to s. ~~861.03~~ 861.08 (1), to establish the validity of the claim, the trustee shall suspend distribution of the portion of the property to which the claim relates pending resolution of the validity of the claim.

SECTION 71. 766.58 (3) (f) of the statutes is amended to read:

SENATE BILL 368

1 766.58 (3) (f) Providing that upon the death of either spouse any of either or
2 both spouses' property, including after-acquired property, passes without probate to
3 a designated person, trust or other entity by nontestamentary disposition. Any such
4 provision in a marital property agreement is revoked upon dissolution of the
5 marriage as provided in s. 767.266 (1). If a marital property agreement provides for
6 the nontestamentary disposition of property, without probate, at the death of the 2nd
7 spouse, at any time after the death of the first spouse the surviving spouse may
8 amend the marital property agreement with regard to property to be disposed of at
9 his or her death unless the marital property agreement expressly provides otherwise
10 and except to the extent property is held in a trust expressly established under the
11 marital property agreement.

12 **SECTION 72.** 766.58 (3m) of the statutes is created to read:

13 766.58 (3m) Chapter 854 applies to transfers at death under a marital property
14 agreement.

15 **SECTION 73.** 766.587 (6) of the statutes is amended to read:

16 766.587 (6) RIGHTS OF SURVIVING SPOUSE. Notwithstanding the fact that an
17 agreement under this section is in effect at, or has terminated before, the death of
18 a spouse who is a party to the agreement, the surviving spouse may elect under ss.
19 s. 861.02 (1) and 861.03. For the purpose of the election, in addition to the property
20 described in s. 851.055, property acquired during marriage and after the
21 determination date which would have been marital property but for the agreement
22 is deferred marital property.

23 **SECTION 74.** 766.589 (7) of the statutes is amended to read:

24 766.589 (7) RIGHTS OF SURVIVING SPOUSE. Notwithstanding the fact that an
25 agreement under this section is in effect at, or has terminated before, the time of

SENATE BILL 368

1 death of a spouse who is party to the agreement, the surviving spouse may elect
2 under ss. s. 861.02 and 861.03. For the purpose of the election, in addition to the
3 property described in s. 851.055, property acquired during marriage and after the
4 determination date which would have been marital property but for the agreement
5 is deferred marital property.

6 **SECTION 75.** 766.61 (2) (c) 2. of the statutes is amended to read:

7 766.61 (2) (c) 2. If within 14 business days after receiving the notice of claim
8 the issuer receives at its home office, as purporting to support the notice of claim, a
9 decree, marital property agreement, written directive signed by the beneficiary and
10 surviving spouse, consent under sub. (3) (e) or proof that a legal action has been filed,
11 including a copy of an election filed pursuant to s. ~~861.03~~ 861.08 (1), to secure an
12 interest as evidenced in such a document, the issuer shall make payment or take
13 action on the policy after the issuer receives from a court or from the claimant and
14 the person directing action or payment written documentation indicating that the
15 dispute has been resolved.

16 **SECTION 76.** 767.266 (title) of the statutes is renumbered 767.266 (1) (title).

17 **SECTION 77.** 767.266 (title) of the statutes is created to read:

18 **767.266 (title) Effect on transfers at death.**

19 **SECTION 78.** 767.266 of the statutes is renumbered 767.266 (1) (intro.) and
20 amended to read:

21 767.266 (1) (title) ~~REVOCATION OF NONTESTAMENTARY DISPOSITION PROVISION~~
22 DEATH PROVISIONS IN MARITAL PROPERTY AGREEMENT. (intro.) Unless the judgment
23 provides otherwise, a judgment of annulment, divorce or legal separation revokes a
24 provision in a marital property agreement under s. 766.58 which provides that
25 provides for any of the following:

SENATE BILL 368

SUBCHAPTER I

DEFINITIONS

SECTION 84. 851.002 of the statutes is amended to read:

851.002 Definitions. The definitions in ss. 851.01 to ~~851.29~~ 851.31 apply to chs. 851 to 882.

SECTION 85. 851.035 of the statutes is created to read:

851.035 Conscious presence. “Conscious presence” means within the range of any of a person’s senses.

SECTION 86. 851.055 of the statutes is repealed and recreated to read:

851.055 Deferred marital property. “Deferred marital property” means any property that satisfies all of the following:

(1) Is not classified by ch. 766.

(2) Was acquired while the spouses were married.

(3) Would have been classified as marital property under ch. 766 if the property had been acquired when ch. 766 applied.

SECTION 87. 851.065 of the statutes is created to read:

851.065 Devise. “Devise”, when used as a noun, means a testamentary disposition of any real or personal property by will. “Devise”, when used as a verb, means to dispose of any real or personal property by will.

SECTION 88. 851.13 of the statutes is amended to read:

851.13 Issue. “Issue” means children, grandchildren, great-grandchildren, and lineal descendants of more remote degrees, including those who occupy that relation by reason of adoption under s. ~~851.51~~ 854.20 and nonmarital children and their lineal descendants to the extent provided by s. 852.05.

SECTION 89. 851.27 of the statutes is amended to read:

SENATE BILL 368

1 **851.27 Property.** “Property” means any interest, legal or equitable, in real or
2 personal property, without distinction as to kind, including money, rights of a
3 beneficiary under a contractual arrangement, choses in action and anything else
4 that may be the subject of ownership.

5 **SECTION 90.** 851.30 of the statutes is created to read:

6 **851.30 Surviving spouse. (1)** Subject to sub. (2), “surviving spouse” means
7 a person who was married to the decedent at the time of the decedent’s death.

8 **(2)** “Surviving spouse” does not include any of the following:

9 (a) An individual who obtains or consents to a final decree or judgment of
10 divorce from the decedent or an annulment of their marriage, if the decree or
11 judgment is not recognized as valid in this state, unless they subsequently
12 participate in a marriage ceremony purporting to marry each other or they
13 subsequently hold themselves out as husband and wife.

14 (b) An individual who, following an invalid decree or judgment of divorce or
15 annulment obtained by the decedent, participates in a marriage ceremony with a 3rd
16 individual.

17 (c) An individual who was party to a valid proceeding concluded by an order
18 purporting to terminate all property rights based on the marriage.

19 **SECTION 91.** 851.31 of the statutes is created to read:

20 **851.31 Will.** “Will” includes a codicil and any document incorporated by
21 reference in a testamentary document under s. 853.32 (1) or (2). “Will” does not
22 include a copy, unless the copy has been proven as a will under s. 856.17, but “will”
23 does include a properly executed duplicate original.

24 **SECTION 92.** 851.35 of the statutes is renumbered 854.17.

SENATE BILL 368

1 **SECTION 93.** Subchapter II (title) of chapter 851 [precedes 851.40] of the
2 statutes is created to read:

CHAPTER 851**SUBCHAPTER II****GENERAL PROBATE PROVISIONS**

6 **SECTION 94.** 851.50 of the statutes is created to read:

7 **851.50 Status of adopted persons.** The status of adopted persons for
8 purposes of inheritance and transfers under wills or other governing instruments,
9 as defined in s. 854.01, is governed by ss. 854.20 and 854.21.

10 **SECTION 95.** 851.51 (title) of the statutes is repealed.

11 **SECTION 96.** 851.51 (1) and (2) of the statutes are renumbered 854.20 (1) and
12 (2) and amended to read:

13 854.20 (1) INHERITANCE RIGHTS BETWEEN ADOPTED PERSON AND ADOPTIVE
14 RELATIVES. ~~A~~ Subject to sub. (4), a legally adopted person is treated as a natural birth
15 child of the person's adoptive parents for purposes of intestate succession by, through
16 and from the adopted person and for purposes of any statute conferring rights upon
17 children, issue or relatives in connection with the law of intestate succession or wills
18 governing instruments.

19 (2) (title) INHERITANCE RIGHTS BETWEEN ADOPTED PERSON AND ~~NATURAL BIRTH~~
20 ~~RELATIVES.~~ ~~A~~ Subject to sub. (4), a legally adopted person ceases to be treated as a
21 child of the person's natural birth parents for the same purposes as under sub. (1),
22 except:

23 (a) If a natural birth parent marries or remarries and the child is adopted by
24 the stepparent, for all purposes the child is treated as the child of the child's natural
25 birth parent for all purposes; whose spouse adopted the child.

SENATE BILL 368**SECTION 96**

1 (b) If a ~~natural~~ birth parent of a marital child dies and the other ~~natural~~ birth
2 parent remarries and the child is adopted by the stepparent, the child is treated as
3 the child of the deceased ~~natural~~ birth parent for purposes of inheritance through
4 that parent and for purposes of any statute conferring rights upon children, issue or
5 relatives of that parent under the law of intestate succession or wills governing
6 instruments.

7 **SECTION 97.** 851.51 (3) of the statutes is repealed.

8 **SECTION 98.** 851.55 of the statutes is repealed and recreated to read:

9 **851.55 Simultaneous death.** The transfer of or title to property that depends
10 upon priority of death with respect to 2 or more persons who die simultaneously is
11 governed by s. 854.03.

12 **SECTION 99.** 852.01 (1) (intro.) of the statutes is amended to read:

13 852.01 (1) WHO ARE HEIRS. (intro.) The ~~Except as modified by the decedent's~~
14 will under s. 852.10 (1), any part of the net estate of a decedent which the decedent
15 has ~~that is~~ not disposed of by will, whether the decedent dies without a will, or with
16 a will which does not completely dispose of the decedent's estate, passes to the
17 decedent's surviving heirs as follows:

18 **SECTION 100.** 852.01 (1) (a) 2. of the statutes is amended to read:

19 852.01 (1) (a) 2. If there are surviving issue one or more of whom are not issue
20 of the surviving spouse, one-half of ~~that portion of the decedent's net estate not~~
21 ~~disposed of by will consisting of decedent's property other than marital property.~~

22 **SECTION 101.** 852.01 (1) (b) and (d) of the statutes are amended to read:

23 852.01 (1) (b) To the issue, the share of the estate not passing to the spouse
24 under par. (a), or the entire estate if there is no surviving spouse; ~~if the issue are all~~
25 ~~in the same degree of kinship to the decedent they take equally, but if they are of~~

SENATE BILL 368

1 ~~unequal degree then.~~ If there are issue other than children, those of more remote
2 degrees take ~~by representation~~ per stirpes.

3 (d) If there is no surviving spouse, issue or parent, to the brothers and sisters
4 and the issue of any deceased brother or sister ~~by representation~~ per stirpes.

5 **SECTION 102.** 852.01 (1) (e) of the statutes is repealed.

6 **SECTION 103.** 852.01 (1) (f) of the statutes is renumbered 852.01 (1) (f) (intro.)
7 and amended to read:

8 852.01 (1) (f) (intro.) If there is no surviving spouse, issue, parent or issue of
9 a parent, to the grandparents and their issue as follows:

10 **SECTION 104.** 852.01 (1) (f) 1. of the statutes is created to read:

11 852.01 (1) (f) 1. One-half to the maternal grandparents equally if both survive,
12 or to the surviving maternal grandparent; if both maternal grandparents are
13 deceased, to the issue of the maternal grandparents or either of them, per stirpes.

14 **SECTION 105.** 852.01 (1) (f) 2. of the statutes is created to read:

15 852.01 (1) (f) 2. One-half to the paternal relations in the same manner as to
16 the maternal relations under subd. 1.

17 **SECTION 106.** 852.01 (1) (f) 3. of the statutes is created to read:

18 852.01 (1) (f) 3. If either the maternal side or the paternal side has no surviving
19 grandparent or issue of a grandparent, the entire estate to the decedent's relatives
20 on the other side.

21 **SECTION 107.** 852.01 (1) (g) of the statutes is repealed.

22 **SECTION 108.** 852.01 (2) of the statutes is repealed and recreated to read:

23 852.01 (2) SURVIVORSHIP REQUIREMENT. Survivorship under sub. (1) is
24 determined as provided in s. 854.03.

25 **SECTION 109.** 852.01 (2m) of the statutes is repealed and recreated to read:

SENATE BILL 368

1 852.01 **(2m)** HEIR WHO KILLS DECEDENT. If a person under sub. (1) killed the
2 decedent, the inheritance rights of that person are governed by s. 854.14.

3 **SECTION 110.** 852.03 (1) of the statutes is repealed and recreated to read:

4 852.03 **(1)** PER STIRPES. If per stirpes distribution is called for under s. 852.01
5 (1) (b), (d) or (f), the rules under s. 854.04 apply.

6 **SECTION 111.** 852.03 (2) of the statutes is repealed.

7 **SECTION 112.** 852.03 (3) of the statutes is repealed and recreated to read:

8 852.03 **(3)** RELATIVES OF THE HALF BLOOD. Inheritance rights of relatives of the
9 half blood are governed by s. 854.21 (4).

10 **SECTION 113.** 852.03 (4) of the statutes is repealed and recreated to read:

11 852.03 **(4)** POSTHUMOUS HEIRS. Inheritance rights of a person specified in s.
12 852.01 (1) who was born after the death of the decedent are governed by s. 854.21 (5).

13 **SECTION 114.** 852.03 (5) and (6) of the statutes are created to read:

14 852.03 **(5)** RELATED THROUGH 2 LINES. Inheritance rights of a person who is
15 related to the decedent through 2 lines of relationship are governed by s. 854.21 (6).

16 **(6)** TAKING THROUGH OR BY ALIEN. No person is disqualified from taking as an
17 heir because the person or a person through whom he or she claims is not or at some
18 time was not a U.S. citizen. The rights of an alien to acquire or hold land in the state
19 are governed by ss. 710.01 to 710.03.

20 **SECTION 115.** 852.05 (1) of the statutes is renumbered 852.05 (1) (intro.) and
21 amended to read:

22 852.05 **(1)** (intro.) A nonmarital child or the child's issue is entitled to take in
23 the same manner as a marital child by intestate succession from and through his or
24 her mother, and from and through his or her father if ~~the~~ any of the following applies:

SENATE BILL 368

1 (a) The father has either been adjudicated to be the father in a paternity
2 proceeding under ch. 767, or by final order or judgment of a court of competent
3 jurisdiction in another state.

4 (b) The father has admitted in open court that he is the father, ~~or,~~

5 (c) The father has acknowledged himself to be the father in writing signed by
6 him.

7 **SECTION 116.** 852.05 (2) of the statutes is amended to read:

8 852.05 (2) Property of a nonmarital child passes in accordance with s. 852.01
9 except that the father or the father's kindred can inherit only if the father has been
10 adjudicated to be the father in a paternity proceeding under ch. 767 or by final order
11 or judgment of a court of competent jurisdiction in another state.

12 **SECTION 117.** 852.05 (3) of the statutes is amended to read:

13 852.05 (3) This section does not apply to a child who becomes a marital child
14 by the subsequent marriage of the child's parents under s. 767.60. The status of a
15 nonmarital child who is legally adopted is governed by s. 851.51 854.20.

16 **SECTION 118.** 852.05 (4) of the statutes is created to read:

17 852.05 (4) Section 895.01 (1) applies to paternity proceedings under ch. 767.

18 **SECTION 119.** 852.09 of the statutes is repealed and recreated to read:

19 **852.09 Assignment of home to surviving spouse.** If the intestate estate
20 includes an interest in a home, assignment of that interest to the surviving spouse
21 is governed by s. 861.21.

22 **SECTION 120.** 852.10 of the statutes is created to read:

23 **852.10 Disinheritance from intestate share. (1)** A decedent's will may
24 exclude or limit the right of an individual or class to succeed to property passing by
25 intestate succession.

SENATE BILL 368

1 **(2)** The share of the intestate estate that would have passed to the individual
2 or class described in sub. (1) passes as if the individual or each member of the class
3 had disclaimed his or her intestate share under s. 854.13.

4 **(3)** This section does not apply if the individual or all members of the class
5 described in sub. (1) predecease the testator.

6 **SECTION 121.** 852.11 of the statutes is repealed and recreated to read:

7 **852.11 Advancement.** The effect of a lifetime gift by the decedent on the
8 intestate share of an heir is governed by s. 854.09.

9 **SECTION 122.** 852.12 of the statutes is created to read:

10 **852.12 Debts to decedent.** If an heir owes a debt to the decedent, the debt
11 shall be charged against the intestate share of the debtor, regardless of whether the
12 debt has been discharged in bankruptcy. If the debtor fails to survive the decedent,
13 the debt shall not be taken into account in computing the intestate shares of the
14 debtor's issue.

15 **SECTION 123.** 852.13 of the statutes is amended to read:

16 **852.13 Right to disclaim intestate share.** Any person to whom property
17 would otherwise pass under s. 852.01 may disclaim all or part of the property as
18 provided under s. ~~853.40~~ 854.13.

19 **SECTION 124.** Subchapter I (title) of chapter 853 [precedes 853.01] of the
20 statutes is created to read:

CHAPTER 853**SUBCHAPTER I****GENERAL RULES**

24 **SECTION 125.** 853.03 (intro.) of the statutes is amended to read:

SENATE BILL 368

1 **853.03 Execution of wills.** (intro.) Every will in order to be validly executed
2 must be in writing and executed with all of the following formalities:

3 **SECTION 126.** 853.03 (1) of the statutes is amended to read:

4 853.03 (1) It must be signed by the testator, by the testator with the assistance
5 of another person with the testator's consent or in the testator's name by ~~one of the~~
6 ~~witnesses or some other~~ another person at the testator's express direction and in the
7 testator's conscious presence, ~~such a proxy signing either to take place or to be~~
8 ~~acknowledged by the testator in the presence of the witnesses; and.~~

9 **SECTION 127.** 853.03 (2) of the statutes is renumbered 853.03 (2) (intro.) and
10 amended to read:

11 853.03 (2) (intro.) It must be signed by 2 or more witnesses ~~in the presence of~~
12 ~~the testator and in the presence of each other.,~~ each of whom signed within a
13 reasonable time after witnessing any of the following:

14 **SECTION 128.** 853.03 (2) (a), (b) and (c) of the statutes are created to read:

15 853.03 (2) (a) The signing of the will as provided under sub. (1).

16 (b) The testator's implicit or explicit acknowledgement of the testator's
17 signature on the will, within the conscious presence of each of the witnesses.

18 (c) The testator's implicit or explicit acknowledgement of the will, within the
19 conscious presence of each of the witnesses.

20 **SECTION 129.** 853.04 of the statutes is created to read:

21 **853.04 Self-proved will. (1) ONE-STEP PROCEDURE.** A will may be
22 simultaneously executed, attested and made self-proved by the affidavit of the
23 testator and witnesses. The affidavit must be made before an officer authorized to
24 administer oaths under the laws of the state in which execution occurs and must be

SENATE BILL 368

1 evidenced by the officer's certificate, under official seal, in substantially the following
2 form:

3 (a) I,, the testator, sign my name to this instrument this day of, and
4 being first duly sworn, declare to the undersigned authority all of the following:

- 5 1. I execute this instrument as my will.
- 6 2. I sign this will willingly, or willingly direct another to sign for me.
- 7 3. I execute this will as my free and voluntary act for the purposes expressed
8 therein.
- 9 4. I am 18 years of age or older, of sound mind and under no constraint or undue
10 influence.

11 Testator:

12 (b) We,,, the witnesses, being first duly sworn, sign our names to this
13 instrument and declare to the undersigned authority all of the following:

- 14 1. The testator executes this instrument as his or her will.
- 15 2. The testator signs it willingly, or willingly directs another to sign for him or
16 her.
- 17 3. Each of us, in the conscious presence of the testator, signs this will as a
18 witness.
- 19 4. To the best of our knowledge, the testator is 18 years of age or older, of sound
20 mind and under no constraint or undue influence.

21 Witness:

22 Witness:

23 State of

24 County of

SENATE BILL 368

1 (c) Subscribed and sworn to before me by ..., the testator, and by ..., and ...,
2 witnesses, this ... day of ...,

3 (Seal)

4 (Signed):

5 (Official capacity of officer):

6 **(2) TWO-STEP PROCEDURE.** An attested will may be made self-proved at any time
7 after its execution by the affidavit of the testator and witnesses. The affidavit must
8 be made before an officer authorized to administer oaths under the laws of the state
9 in which the affidavit occurs and must be evidenced by the officer's certificate, under
10 official seal, attached or annexed to the will in substantially the following form:

11 State of

12 County of

13 (a) We, ..., ..., and ..., the testator and the witnesses whose names are signed
14 to the foregoing instrument, being first duly sworn, do declare to the undersigned
15 authority all of the following:

16 1. The testator executed the instrument as his or her will.

17 2. The testator signed willingly, or willingly directed another to sign for him or
18 her.

19 3. The testator executed the will as a free and voluntary act.

20 4. Each of the witnesses, in the conscious presence of the testator, signed the
21 will as witness.

22 5. To the best of the knowledge of each witness, the testator was, at the time
23 of execution, 18 years of age or older, of sound mind and under no constraint or undue
24 influence.

25 Testator:

SENATE BILL 368

1 Witness:

2 Witness:

3 (b) Subscribed and sworn to before me by, the testator, and by, and,
4 witnesses, this day of,

5 (Seal)

6 (Signed):

7 (Official capacity of officer):

8 **(3) EFFECT OF AFFIDAVIT.** (a) A signature affixed to a self-proving affidavit
9 attached to a will is considered a signature affixed to the will, if necessary to prove
10 the due execution of the will.

11 (b) Inclusion in a will of an affidavit in substantially the form under sub. (1)
12 or (2) is conclusive evidence that the will was executed in compliance with s. 853.03.

13 **SECTION 130.** 853.05 of the statutes is repealed and recreated to read:

14 **853.05 Execution of wills outside the state or by nonresidents within**
15 **this state.** (1) A will is validly executed if it is in writing and any of the following
16 applies:

17 (a) The will is executed according to s. 853.03.

18 (b) The will is executed in accordance with the law, at the time of execution or
19 at the time of death, of any of the following:

20 1. The place where the will was executed.

21 2. The place where the testator resided, was domiciled or was a national at the
22 time of execution.

23 3. The place where the testator resided, was domiciled or was a national at the
24 time of death.

SENATE BILL 368

1 (2) Any will under sub. (1) (b) has the same effect as if executed in this state
2 in compliance with s. 853.03.

3 **SECTION 131.** 853.07 (2) of the statutes is amended to read:

4 853.07 (2) ~~A will is not~~ Neither a will nor any of its provisions is invalidated
5 because it the will is signed by an interested witness; ~~but, unless the will is also~~
6 ~~signed by 2 disinterested witnesses, any beneficial provisions of the will for a witness~~
7 ~~or the spouse of the witness are invalid to the extent that such provisions in the~~
8 ~~aggregate exceed in value what the witness or spouse would have received had the~~
9 ~~testator died intestate. Valuation is to be made as of testator's death.~~

10 **SECTION 132.** 853.07 (3) of the statutes is repealed.

11 **SECTION 133.** 853.11 (1) (title) of the statutes is amended to read:

12 853.11 (1) (title) ~~SUBSEQUENT~~ REVOCATION BY WRITING OR PHYSICAL ACT.

13 **SECTION 134.** 853.11 (1) (intro.) and (a) of the statutes are consolidated,
14 renumbered 853.11 (1) (a) and amended to read:

15 853.11 (1) (a) A will is revoked in whole or in part by: ~~(a) A~~ a subsequent will,
16 ~~codicil or other instrument which~~ that is executed in compliance with s. 853.03 or
17 853.05 and ~~which~~ that revokes the prior will or a part thereof expressly or by
18 inconsistency; ~~or.~~

19 **SECTION 135.** 853.11 (1) (b) of the statutes is renumbered 853.11 (1m) and
20 amended to read:

21 853.11 (1m) (title) REVOCATION BY PHYSICAL ACT. Burning A will is revoked in
22 whole or in part by burning, tearing, canceling or destroying the will,
23 or part, with the intent to revoke, by the testator or by some person in the testator's
24 conscious presence and by the testator's direction.

25 **SECTION 136.** 853.11 (1) (bm) of the statutes is created to read:

SENATE BILL 368

1 853.11 (1) (bm) 1. A subsequent will wholly revokes the prior will if the testator
2 intended the subsequent will to replace rather than supplement the prior will,
3 regardless of whether the subsequent will expressly revokes the prior will.

4 2. The testator is presumed to have intended a subsequent will to replace,
5 rather than supplement, the prior will if the subsequent will completely disposes of
6 the testator's estate. If this presumption arises and is not rebutted by clear and
7 convincing evidence, the prior will is revoked.

8 3. The testator is presumed to have intended a subsequent will to supplement,
9 rather than replace, the prior will if the subsequent will does not completely dispose
10 of the testator's estate. If this presumption arises and is not rebutted by clear and
11 convincing evidence, the subsequent will revokes the prior will only to the extent of
12 any inconsistency.

13 **SECTION 137.** 853.11 (2) of the statutes is repealed and recreated to read:

14 853.11 (2) **PREMARITAL WILL.** (a) *Entitlement of surviving spouse.* Subject to par.
15 (c), if the testator married the surviving spouse after the testator executed his or her
16 will, the surviving spouse is entitled to a share of the probate estate.

17 (b) *Value of share.* The value of the share under par. (a) is the value of the share
18 that the surviving spouse would have received had the testator died with an intestate
19 estate equal to the value of the net estate of the decedent less the value of all of the
20 following:

21 1. All devises to or for the benefit of the testator's children who were born before
22 the marriage to the surviving spouse and who are not also the children of the
23 surviving spouse.

24 2. All devises to or for the benefit of the issue of a child described in subd. 1.

SENATE BILL 368

1 3. All devises that pass under s. 854.06, 854.07, 854.21 or 854.22 to or for the
2 benefit of children described in subd. 1. or issue of those children.

3 (c) *Exceptions.* Paragraph (a) does not apply if any of the following applies:

4 1. It appears from the will or other evidence that the will was made in
5 contemplation of the testator's marriage to the surviving spouse.

6 2. It appears from the will or other evidence that the will is intended to be
7 effective notwithstanding any subsequent marriage, or there is sufficient evidence
8 that the testator considered revising the will after marriage but decided not to.

9 3. The testator provided for the spouse by transfer outside the will and the
10 intent that the transfer be in lieu of a testamentary provision is shown by the
11 testator's statements or is reasonably inferred from the amount of the transfer or
12 other evidence.

13 4. The testator and the spouse have entered into an agreement that complies
14 with ch. 766 and that provides for the spouse or specifies that the spouse is to have
15 no rights in the testator's estate.

16 (d) *Priority and abatement.* In satisfying the share provided by this subsection:

17 1. Amounts received by the surviving spouse under s. 861.02 and devises made
18 by will to the surviving spouse are applied first.

19 2. Devises other than those described in par. (b) 1. to 3. abate as provided under
20 s. 854.18.

21 **SECTION 138.** 853.11 (3) of the statutes is repealed and recreated to read:

22 853.11 (3) FORMER SPOUSE. The effect of a transfer under a will to a former
23 spouse is governed by s. 854.15.

24 **SECTION 139.** 853.11 (3m) of the statutes is repealed and recreated to read:

SENATE BILL 368

1 853.11 **(3m)** INTENTIONAL KILLING OF DECEDENT BY BENEFICIARY. If a beneficiary
2 under a will killed the decedent, the rights of that beneficiary are governed by s.
3 854.14.

4 **SECTION 140.** 853.11 (6) of the statutes is repealed and recreated to read:

5 853.11 **(6)** REVIVAL OF REVOKED WILL. (a) If a subsequent will that partly revoked
6 a previous will is itself revoked by a revocatory act under sub. (1m), the revoked part
7 of the previous will is revived. This paragraph does not apply if it is evident from the
8 circumstances of the revocation of the subsequent will or from the testator's
9 contemporary or subsequent declarations that the testator did not intend the
10 revoked part of the previous will to take effect as executed.

11 (b) If a subsequent will that wholly revoked a previous will is itself revoked by
12 a revocatory act under sub. (1m), the previous will remains revoked unless it is
13 revived. The previous will is revived if it is evident from the circumstances of the
14 revocation of the subsequent will or from the testator's contemporary or subsequent
15 declarations that the testator intended the previous will to take effect as executed.

16 (c) If a subsequent will that wholly or partly revoked a previous will is itself
17 revoked by another, later will, the previous will or its revoked part remains revoked,
18 unless it or its revoked part is revived. The previous will or its revoked part is revived
19 to the extent that it appears from the terms of the later will, or from the testator's
20 contemporary or subsequent declarations, that the testator intended the previous
21 will to take effect.

22 (d) In the absence of an original valid will, establishment of the execution and
23 validity of the revived will or part is governed by s. 856.17.

24 **SECTION 141.** 853.13 of the statutes is repealed and recreated to read:

SENATE BILL 368

1 **853.13 Contracts. (1)** A contract to make a will or devise, not to revoke a will
2 or devise or to die intestate may be established only by any of the following:

3 (a) Provisions of a will stating the material provisions of the contract.

4 (b) An express reference in a will to a contract and extrinsic evidence proving
5 the terms of the contract.

6 (c) A valid written contract, including a marital property agreement under s.
7 766.58 (3) (e).

8 (d) Clear and convincing extrinsic evidence.

9 **(2)** The execution of a joint will or mutual wills does not create a presumption
10 of a contract not to revoke the will or wills.

11 **SECTION 142.** 853.15 (1) of the statutes is renumbered 853.15 (1) (a) and
12 amended to read:

13 853.15 **(1)** (a) Unless the will provides otherwise, this subsection applies if a
14 will gives a bequest or devise to one beneficiary and also clearly purports to give to
15 another beneficiary a property interest which that does not pass under the will but
16 belongs to the first beneficiary by right of ownership, survivorship, beneficiary
17 designation, ~~election under s. 861.02 (1) or otherwise.~~

18 (b) If the conditions in par. (a) are fulfilled, the first beneficiary must elect
19 either to take under the will and transfer his or her property interest in accordance
20 with the will, or to retain his or her property interest and not take under the will.
21 If the first beneficiary elects not to take under the will, unless the will provides
22 otherwise ~~the bequest or his or her devise given him or her under the will is to~~ shall
23 be assigned by the court to the other beneficiary ~~in lieu of the property interest which~~
24 ~~does not pass under the will.~~

SENATE BILL 368

1 (c) This section does not require an election if the property interest belongs to
2 the first beneficiary by reason because of transfer or beneficiary designation made
3 by the decedent after the execution of the will.

4 **SECTION 143.** 853.16 (title) of the statutes is repealed.

5 **SECTION 144.** 853.16 (1) of the statutes is renumbered 853.32 (2) (a).

6 **SECTION 145.** 853.16 (2) of the statutes is renumbered 853.32 (2) (b) and
7 amended to read:

8 853.32 (2) (b) Another document under ~~sub. (1) par. (a)~~ is valid even if it does
9 not exist when the will is executed, even if it is changed after the will is executed and
10 even if it has no significance except for its effect on the disposition of property by the
11 will.

12 **SECTION 146.** 853.19 of the statutes is repealed and recreated to read:

13 **853.19 Advancement.** The effect of a lifetime gift by the testator on the rights
14 of a beneficiary under the will is governed by s. 854.09.

15 **SECTION 147.** 853.25 (1) of the statutes is repealed and recreated to read:

16 853.25 (1) CHILDREN BORN OR ADOPTED AFTER MAKING OF THE WILL. (a)
17 *Applicability.* Except as provided in sub. (5), if a will fails to provide for a child of the
18 testator born or adopted after execution of the will, the child is entitled to a share of
19 the estate unless any of the following applies:

20 1. It appears from the will or from other evidence that the omission was
21 intentional.

22 2. The testator provided for the omitted child by transfer outside the will and
23 the intent that the transfer be in lieu of a testamentary provision is shown by the
24 testator's statements or is reasonably inferred from the amount of the transfer or
25 other evidence.

SENATE BILL 368

1 (b) *Share if testator had no living child at execution.* Except as provided in sub.
2 (5), if a will fails to provide for a child of the testator born or adopted after the
3 execution of the will and the testator had no child living when he or she executed the
4 will, the omitted child receives a share in the estate equal in value to that which the
5 child would have received under ch. 852. This paragraph does not apply if the will
6 devised all or substantially all of the estate to or for the benefit of the other parent
7 of the omitted child and that other parent survives the testator and is entitled to take
8 under the will.

9 (c) *Share if testator had living child at execution.* Except as provided in sub.
10 (5), if a will fails to provide for a child of the testator born or adopted after the
11 execution of the will and the testator had one or more children living when he or she
12 executed the will and the will devised property to one or more of the then-living
13 children, the omitted child is entitled to share in the testator's estate as follows:

14 1. The portion that the omitted child is entitled to share is limited to devises
15 made to the testator's then-living children under the will.

16 2. The omitted child is entitled to receive the share of the testator's estate, as
17 limited in subd. 1., that the child would have received had the testator included all
18 omitted after-born and after-adopted children with the children to whom devises
19 were made under the will and had given an equal share of the estate to each child.

20 3. To the extent feasible, the interest granted an omitted child under this
21 section shall be of the same character, whether equitable or legal, present or future,
22 as that devised to the testator's then-living children under the will.

23 4. In satisfying a share provided by this paragraph, devises to the testator's
24 children who were living when the will was executed abate ratably. In abating the

SENATE BILL 368

1 devises of the then-living children, the court shall preserve to the maximum extent
2 possible the character of the testamentary plan adopted by the testator.

3 (d) *Rights of issue.* Except as provided in sub. (5), if a child entitled to a share
4 under this section dies before the testator, and the child leaves issue who survive the
5 testator, the issue who represent the deceased child are entitled to the deceased
6 child's share.

7 **SECTION 148.** 853.25 (2) of the statutes is amended to read:

8 853.25 (2) LIVING ISSUE OMITTED BY MISTAKE. If Except as provided in sub. (5),
9 if clear and convincing evidence proves that by mistake or accident the testator failed
10 to provide in the testator's will for a child living at the time of making of the will, or
11 for the issue of any then deceased child, by mistake or accident, including the
12 mistaken belief that the child or issue of a deceased child was dead at the time the
13 will was executed, the child or issue is entitled to receive a share in the estate of the
14 testator equal in value to the share which the child or issue would have received if
15 the testator had died intestate. But failure, as provided under sub. (1), as if the child
16 or issue was born or adopted after the execution of the will. Failure to mention a child
17 or issue in the will is not in itself evidence of mistake or accident.

18 **SECTION 149.** 853.25 (4) of the statutes is amended to read:

19 853.25 (4) FROM WHAT ESTATE SHARE IS TO BE TAKEN. Except as provided in sub.
20 (5), the court shall in its final judgment assign the a share provided by this section
21 under sub. (1) (b) as follows:

22 (a) ~~From any~~ First, from intestate property ~~first;~~

23 (b) ~~The~~ Any balance from each of the beneficiaries devise to a beneficiary under
24 the will in proportion to the value of the estate each beneficiary would have received
25 under the will as written, ~~unless.~~ If the obvious intention of the testator, shown by

SENATE BILL 368

1 clear and convincing evidence, in relation to some specific gift or other provision in
2 the will would thereby be defeated, ~~in which case~~ by assignment of the share as
3 provided in this paragraph, the court may adopt a different apportionment and may
4 exempt a specific gift devise or other provision.

5 **SECTION 150.** 853.25 (5) of the statutes is amended to read:

6 853.25 (5) DISCRETIONARY POWER OF COURT TO ASSIGN DIFFERENT SHARE. If in any
7 case under sub. (1) or (2) the court determines that the ~~intestate share is~~ in a ~~larger~~
8 ~~different~~ amount ~~than or form from what~~ the testator would have wanted to provide
9 for the omitted child or issue of a deceased child, ~~because it exceeds the value of a~~
10 ~~provision for another child or for issue of a deceased child under the will, or that~~
11 ~~assignment of the intestate share would unduly disrupt the testamentary scheme,~~
12 the court may in its final judgment make such provision for the omitted child or issue
13 out of the estate as it deems would best accord with the ~~probable~~ intent of the testator,
14 ~~such as assignment, outright or in trust, of any amount less than the intestate share~~
15 ~~but approximating the value of the interest of other issue, or modification of the~~
16 ~~provisions of a testamentary trust for other issue to include the omitted child or~~
17 ~~issue.~~

18 **SECTION 151.** 853.27 of the statutes is repealed and recreated to read:

19 **853.27 Lapse.** The rights under a will of a beneficiary who predeceases the
20 testator are governed by s. 854.06.

21 **SECTION 152.** 853.29 of the statutes is amended to read:

22 **853.29 After-acquired property.** A will is presumed to pass all property
23 ~~which~~ that the testator owns at the testator's death and ~~which~~ that the testator has
24 power to ~~transmit~~ transfer by will, including property acquired by the testator after
25 the execution of the will or acquired by the testator's estate.

SENATE BILL 368

1 **SECTION 153.** 853.32 of the statutes is created to read:

2 **853.32 Effect of reference to another document. (1) INCORPORATION.** A
3 will may incorporate by reference another writing or document if all of the following
4 apply:

5 (a) The will, either expressly or as construed from extrinsic evidence, manifests
6 an intent to incorporate the other writing or document.

7 (b) The other writing or document was in existence when the will was executed.

8 (c) The other writing or document is sufficiently described in the will to permit
9 identification with reasonable certainty.

10 (d) The will was executed in compliance with s. 853.03 or 853.05.

11 **(2) DISPOSITION OF TANGIBLE PERSONAL PROPERTY.**

12 (c) If the document described in par. (a) is not located by the personal
13 representative, or delivered to the personal representative or circuit court with
14 jurisdiction over the matter, within 30 days after the appointment of the personal
15 representative, the personal representative may dispose of tangible personal
16 property according to the provisions of the will as if no such document exists. If a
17 valid document is located after some or all of the tangible personal property has been
18 disposed of, the document controls the distribution of the property described in it, but
19 the personal representative incurs no liability for the prior distribution or sale of the
20 property, as long as the time specified in this paragraph has elapsed.

21 (d) The duties and liability of a person who has custody of a document described
22 in par. (a), or information about such a document, are governed by s. 856.05.

23 (e) Beneficiaries under a document that is described in par. (a) are not
24 interested parties for purposes of s. 879.03.

SENATE BILL 368

1 **(3) TRANSFERS TO LIVING TRUSTS.** The validity and implementation of a will
2 provision that purports to transfer or appoint property to a living trust are governed
3 by s. 701.08.

4 **SECTION 154.** 853.325 of the statutes is created to read:

5 **853.325 Effect of reference to acts or events.** A will may dispose of
6 property by reference to acts or events that have significance apart from their effect
7 on the disposition of property under the will and that do not occur solely for the
8 purpose of determining the disposition of property under the will. Reference to the
9 execution or revocation of another individual's will fulfills the requirements under
10 this section. This section applies whether the acts or events occur before or after
11 execution of the will or before or after the testator's death.

12 **SECTION 155.** 853.33 of the statutes is repealed and recreated to read:

13 **853.33 Gift of securities.** Section 854.11 governs gifts of securities under a
14 will.

15 **SECTION 156.** 853.35 of the statutes is repealed and recreated to read:

16 **853.35 Nonademption of specific gifts in certain instances.** The rights
17 of a beneficiary with respect to a specific gift that is destroyed, damaged, sold or
18 condemned before the testator's death are governed by s. 854.08.

19 **SECTION 157.** 853.40 of the statutes is repealed and recreated to read:

20 **853.40 Disclaimer.** A person to whom property would otherwise pass under
21 a will may disclaim all or part of the property as provided in s. 854.13.

22 **SECTION 158.** 853.41 of the statutes is created to read:

23 **853.41 Applicability of general transfers at death provisions.** Chapter
24 854 applies to transfers under wills, including transfers under a Wisconsin basic will
25 or basic will with trust.

SENATE BILL 368

1 **SECTION 159.** Subchapter II (title) of chapter 853 [precedes 853.50] of the
2 statutes is created to read:

CHAPTER 853**SUBCHAPTER II****WISCONSIN BASIC WILLS**

6 **SECTION 160.** 853.50 (1) of the statutes is amended to read:

7 853.50 (1) “By right of representation” means ~~that the issue of a deceased~~
8 ~~person inherit the share of an estate that their immediate ancestor would have~~
9 ~~inherited, if living~~ according to the method specified in s. 854.04 (1).

10 **SECTION 161.** 853.50 (3) of the statutes is amended to read:

11 853.50 (3) “Issue” means children, grandchildren, great-grandchildren, and
12 lineal descendants of more remote degrees, including those who occupy that relation
13 by reason of adoption under s. ~~851.51~~ 854.20 and nonmarital children ~~who are not~~
14 ~~legitimate~~ and their lineal descendants to the extent provided by s. 852.05.

15 **SECTION 162.** 853.51 (intro.) of the statutes is renumbered 853.51 (1) (intro.).

16 **SECTION 163.** 853.51 (1) of the statutes is renumbered 853.51 (1) (a), and 853.51
17 (1) (a) 1., as renumbered, is amended to read:

18 853.51 (1) (a) 1. Complete the blanks, boxes and lines ~~according to~~
19 ~~substantially in accordance with~~ the instructions. ~~Any failure to comply with~~
20 ~~instructions described under s. 853.54 (3) does not affect the validity of the will.~~

21 **SECTION 164.** 853.51 (1) (bc) of the statutes is created to read:

22 853.51 (1) (bc) The witnesses shall comply with s. 853.03 (2).

23 **SECTION 165.** 853.51 (2) of the statutes is repealed.

24 **SECTION 166.** 853.51 (2m) of the statutes is created to read:

SENATE BILL 368

24 STATEMENT OF WITNESSES (You must use two witnesses, who should be
25 adults.)

1 I declare that the testator signed the will in front of me, acknowledged to me
2 that this document was his or her will *or* acknowledged to me that the signature
3 above is his or her signature. The testator appears to me to be of sound mind and
4 not under undue influence.

5 Signature Residence Address:
6 Print Name
7 Here: Date Signed:

8 I declare that the testator signed the will in front of me, acknowledged to me
9 that this document was his or her will *or* acknowledged to me that the signature
10 above is his or her signature. The testator appears to me to be of sound mind and
11 not under undue influence.

12 Signature Residence Address:
13 Print Name
14 Here: Date Signed:

15 **SECTION 170.** 853.56 (NOTICE) 7. of the statutes is amended to read:

16 853.56 (**NOTICE**) 7. THE WITNESSES TO THIS WILL SHOULD NOT BE
17 PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD
18 READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE
19 DESCRIBED AT THE END OF THIS WILL. ~~ALL OF THE WITNESSES MUST~~
20 ~~WATCH YOU SIGN THIS WILL. EACH WITNESS MUST SIGN HIS OR HER~~
21 ~~NAME WITH YOU AND THE OTHER WITNESS PRESENT.~~

22 **SECTION 171.** 853.56 (NOTICE) 9. of the statutes is amended to read:

SENATE BILL 368

24 Signature Residence Address:

25 Print Name

1 Here: Date Signed:

2 **SECTION 173.** 853.59 (form) (a) of the statutes is amended to read:

3 853.59 (**form**) (a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN
4 ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY
5 CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT
6 OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS
7 OF AGE.

8 **SECTION 174.** 853.59 (form) (2) (a) of the statute is amended to read:

9 853.59 (**form**) (2) (a) As long as any child of mine under 21 years of age is living,
10 the trustee shall distribute from time to time to or for the benefit of any one or more
11 of my children and the descendants of any deceased child (the beneficiaries) ~~by right~~
12 ~~of representation~~ of any age as much, or all, of the principal or net income of the trust
13 or both, as the trustee deems necessary for their health, support, maintenance and
14 education. Any undistributed income shall be accumulated and added to the
15 principal. "Education" includes, but is not limited to, college, vocational and other
16 studies after high school, and reasonably related living expenses. Consistent with
17 the trustee's fiduciary duties, the trustee may distribute trust income or principal in
18 equal or unequal shares and to any one or more of the beneficiaries to the exclusion
19 of other beneficiaries. In deciding on distributions, the trustee may take into account
20 the beneficiaries' other income, outside resources or sources of support, including the
21 capacity for gainful employment of a beneficiary who has completed his or her
22 education.

23 **SECTION 175.** Chapter 854 of the statutes is created to read:

SENATE BILL 368**CHAPTER 854****TRANSFERS AT DEATH —****GENERAL RULES**

1
2
3
4 **854.01 Definition.** In this chapter, “governing instrument” means a will; a
5 deed; a trust instrument; an insurance or annuity policy; a contract; a pension,
6 profit-sharing, retirement or similar benefit plan; a marital property agreement
7 under s. 766.58 (3) (f); a beneficiary designation under s. 40.02 (8) (a); an instrument
8 under ch. 705; an instrument that creates or exercises a power of appointment or any
9 other dispositive, appointive or nominative instrument that transfers property at
10 death.

11 **854.02 Scope.** This chapter applies to all statutes and governing instruments
12 that transfer property at death.

13 **854.03 Requirement of survival by 120 hours.** (1) REQUIREMENT OF
14 SURVIVAL. Except as provided in sub. (5), if property is transferred to an individual
15 under a statute or under a provision in a governing instrument that requires the
16 individual to survive an event and it is not established that the individual survived
17 the event by at least 120 hours, the individual is considered to have predeceased the
18 event.

19 (2) COOWNERS WITH RIGHT OF SURVIVORSHIP. (a) In this subsection, “coowners
20 with right of survivorship” includes joint tenants, owners of survivorship marital
21 property and other coowners of property or accounts that are held under
22 circumstances that entitle one or more persons to all of the property or account upon
23 the death of one or more of the others.

24 (b) Except as provided in sub. (5), if property is transferred under a governing
25 instrument that establishes 2 or more coowners with survivorship, and if it is not

SENATE BILL 368

1 established that at least one of the coowners survived the others by at least 120
2 hours, the property is transferred to the coowners in proportion to their ownership
3 interests.

4 **(3) MARITAL PROPERTY.** Except as provided in subs. (4) and (5), if a husband and
5 wife die leaving marital property and it is not established that one survived the other
6 by at least 120 hours, 50% of the marital property shall be distributed as if it were
7 the husband's individual property and the husband had survived, and 50% of the
8 marital property shall be distributed as if it were the wife's individual property and
9 the wife had survived.

10 **(4) LIFE INSURANCE.** Except as provided in sub. (5), if the insured and the
11 beneficiary under a policy of life or accident insurance have both died and it is not
12 established that one survived the other by at least 120 hours, the proceeds of the
13 policy shall be distributed as if the insured had survived the beneficiary. If the policy
14 is the marital property of the insured and of the insured's spouse and there is no
15 alternative beneficiary except the estate or the personal representative of the estate,
16 the proceeds shall be distributed as marital property in the manner provided in sub.
17 (3).

18 **(5) EXCEPTIONS.** This section does not apply if any of the following conditions
19 applies:

20 (a) The statute or governing instrument requires the individual to survive an
21 event by a specified period.

22 (b) The statute or governing instrument indicates that the individual is not
23 required to survive an event by any specified period.

24 (c) The statute or governing instrument deals with simultaneous deaths or
25 deaths in a common disaster and the provision is relevant to the facts.

SENATE BILL 368

1 (d) The imposition of a 120-hour requirement would cause a nonvested
2 property interest or a power of appointment to fail to be valid, or to be invalidated,
3 under s. 700.16 or under the rule against perpetuities of the applicable jurisdiction.

4 (e) The application of this section to more than one statute or governing
5 instrument would result in an unintended failure or unintended duplication of a
6 transfer.

7 (f) The application of this section would result in the escheat of an intestate
8 estate under s. 852.01 (3).

9 **(6) EVIDENTIARY STANDARD.** Unless the statute or governing instrument
10 provides otherwise, proof that an individual survived the period required under
11 subs. (1) to (4) must be by clear and convincing evidence.

12 **(7) EXTRINSIC EVIDENCE.** Extrinsic evidence may be used to construe a governing
13 instrument affected by this section.

14 **854.04 Representation; per stirpes; modified per stirpes; per capita at**
15 **each generation; per capita. (1) BY REPRESENTATION OR PER STIRPES.** (a) Except
16 as provided in subs. (5) and (6), if a statute or a governing instrument calls for
17 property to be distributed to the issue or descendants of a designated person “by
18 representation”, “by right of representation” or “per stirpes”, the property is divided
19 into equal shares for the children of the designated person. Each surviving child and
20 each deceased child who left surviving issue are allocated one share.

21 (b) The share of each deceased child allocated a share under par. (a) is divided
22 among that person’s issue in the same manner as under par. (a), repeating until the
23 property is fully allocated among surviving issue.

24 **(2) MODIFIED PER STIRPES.** (a) Except as provided in subs. (5) and (6), if a statute
25 or a governing instrument calls for property to be distributed to the issue or

SENATE BILL 368

1 descendants of a designated person by “modified per stirpes”, the property is divided
2 into equal shares at the generation nearest to the designated person that contains
3 one or more surviving issue. Each survivor and each deceased person in that same
4 generation who left surviving issue are allocated one share.

5 (b) The share of each deceased person allocated a share in par. (a) is divided
6 among that person’s issue in the same manner as under par. (a), repeating until the
7 property is fully allocated.

8 **(3) PER CAPITA AT EACH GENERATION.** (a) Except as provided in subs. (5) and (6),
9 if a statute or a governing instrument calls for property to be distributed to the issue
10 or descendants of a designated person “per capita at each generation”, the property
11 is divided into equal shares at the generation nearest to the designated person that
12 contains one or more surviving issue. Each survivor in that generation is allocated
13 one share, and the shares of the deceased persons in that same generation who left
14 surviving issue are combined for distribution under par. (b).

15 (b) The combined share created under par. (a) is divided among the surviving
16 issue of the persons whose shares were combined in the same manner as under par.
17 (a), as though all of those issue were the issue of one person. The process is repeated
18 until the property is fully allocated.

19 **(4) PER CAPITA.** Except as provided in sub. (6), if a statute or governing
20 instrument calls for property to be distributed to a group or class “per capita”, the
21 property is divided into as many shares as there are surviving members of the group
22 or class, and each member receives one share.

23 **(5) CERTAIN INDIVIDUALS DISREGARDED.** For the purposes of this section, all of the
24 following apply:

SENATE BILL 368

1 (a) An individual who is deceased and who left no surviving issue is
2 disregarded.

3 (b) An individual who has a surviving ancestor who is an issue of the designated
4 person is not entitled to a share.

5 **(6) CONTRARY INTENT.** This section does not apply if the transfer is made under
6 a governing instrument and there is a finding of contrary intent of the person who
7 executed the governing instrument. Extrinsic evidence may be used to construe that
8 intent.

9 **854.05 No exoneration of encumbered property. (1) DEFINITIONS.** In this
10 section:

11 (a) "Debt" includes accrued interest on the debt.

12 (b) "Encumbrance" includes mortgages, liens, pledges and other security
13 agreements that are encumbrances on property.

14 **(2) GENERALLY.** (a) Except as provided in sub. (5), all property that is
15 specifically transferred by a governing instrument shall be assigned to the
16 transferee without exoneration of a debt that is secured by an encumbrance on the
17 property.

18 (b) If the debt that is secured by the encumbrance on the property is paid in
19 whole or in part out of other assets, the specifically transferred property shall be
20 assigned to the transferee only if any of the following applies:

21 1. The transferee contributes to the person or entity that held the assets that
22 were used to pay the debt an amount equal to the amount that was paid.

23 2. The person or entity secures the amount described in subd. 1. through a new
24 encumbrance on the property.

SENATE BILL 368

1 **(3) JOINT TENANCY; SURVIVORSHIP MARITAL PROPERTY.** Except as provided in sub.
2 (5), if all or part of a debt that is secured by an encumbrance on property in which
3 the decedent at the time of death had an interest as a joint tenant or as a holder of
4 survivorship marital property is paid out of other assets as the result of a claim being
5 allowed, the person or entity that makes the payment is subrogated to all rights that
6 the claimant had against the property.

7 **(4) INSURANCE.** Except as provided in sub. (5), if all or part of a debt that is
8 secured by an encumbrance on the proceeds payable under a life insurance policy in
9 which the decedent was the named insured is paid out of other assets as the result
10 of a claim being allowed, the person or entity that makes the payment is subrogated
11 to all rights that the claimant had against the proceeds.

12 **(5) CONTRARY INTENT.** This section does not apply to the extent that a governing
13 instrument, either expressly or as construed from extrinsic evidence, provides
14 otherwise. A general directive to pay debts does not give rise to a presumption of
15 exoneration.

16 **854.06 Predeceased transferee. (1) DEFINITIONS.** In this section:

17 (a) "Provision in a governing instrument" includes all of the following:

18 1. A gift to an individual whether or not the individual is alive at the time of
19 the execution of the instrument.

20 2. A share in a class gift only if a member of the class dies after the execution
21 of the instrument.

22 3. An appointment by the decedent under any power of appointment, unless the
23 issue who would take under this section could not have been appointees under the
24 terms of the power.

SENATE BILL 368

1 (b) "Revocable provision" means a provision that the decedent had the power
2 to change or revoke immediately before death.

3 (c) "Stepchild" means a child of the decedent's surviving, deceased or former
4 spouse, and not of the decedent.

5 **(2) SCOPE OF COVERAGE.** This section applies to revocable provisions in a
6 governing instrument executed by the decedent that provide for an outright transfer
7 upon the death of the decedent to any of the following persons:

8 (a) A grandparent of the decedent, or issue of a grandparent, subject to s.
9 854.21.

10 (b) A stepchild of the decedent, subject to s. 854.15.

11 **(3) SUBSTITUTE GIFT TO ISSUE OF COVERED TRANSFEREE.** Subject to sub. (4), if a
12 transferee under a provision described in sub. (2) does not survive the decedent but
13 has issue who do survive, the issue of the transferee take the transfer per stirpes, as
14 provided in s. 854.04 (1).

15 **(4) CONTRARY INTENT.** (a) This section does not apply if there is a finding of
16 contrary intent of the decedent. Extrinsic evidence may be used to construe that
17 intent.

18 (b) If the governing instrument designates one or more persons, classes or
19 groups of people as contingent transferees, those transferees take in preference to
20 those under sub. (3). But if none of the contingent transferees survives, sub. (3)
21 applies to the first group in the sequence of contingent transferees that has one or
22 more transferees specified in sub. (2) who left surviving issue.

23 **854.07 Failed transfer and residue.** (1) Except as provided in sub. (4) and
24 s. 854.06, if an attempted transfer under a governing instrument fails, the attempted

SENATE BILL 368

1 transfer becomes part of the residue of the governing instrument. This subsection
2 does not apply if the attempted transfer is itself a residuary transfer.

3 (2) Except as provided in sub. (4) and s. 854.06, if the residue of a governing
4 instrument is to be transferred to 2 or more persons, the share of a residuary
5 transferee that fails passes to the other residuary transferees in proportion to the
6 interest of each in the remaining part of the residue.

7 (3) If a governing instrument other than a will does not effectively dispose of
8 an asset that is governed by the instrument, that asset shall be paid or distributed
9 to the decedent's probate estate.

10 (4) This section does not apply if there is a finding of contrary intent of the
11 person who executed the governing instrument. Extrinsic evidence may be used to
12 construe that intent.

13 **854.08 Nonademption of specific gifts in certain cases.** (1) ABROGATION
14 OF COMMON LAW. The common law doctrine of ademption by extinction, as it might
15 otherwise apply to the situations governed by this section, is abolished.

16 (2) PROCEEDS OF SALE. (a) Subject to sub. (6), if property that is the subject of
17 a specific gift is sold by the person who executed the governing instrument within 2
18 years of the person's death, the specific beneficiary has the right to the following
19 amounts if available under the governing instrument:

20 1. Any balance of the purchase price unpaid at the time of death, including any
21 security interest in the property and interest accruing before death, together with
22 the incidents of the specific gift.

23 2. A general pecuniary transfer equivalent to the amount of the purchase price
24 paid to, or for the benefit of, the person within one year of the seller's death.

SENATE BILL 368

1 (b) Acceptance of a promissory note of the purchaser or a 3rd party is not
2 considered payment, but payment on the note is payment on the purchase price; and
3 for purposes of this section property is considered sold as of the date when a valid
4 contract of sale is made. Sale by an agent of the person who executed the governing
5 instrument or by a trustee under a revocable living trust created by the person is a
6 sale by the person for purposes of this section.

7 **(3) PROCEEDS OF INSURANCE ON PROPERTY.** Subject to sub. (6), if insured property
8 that is the subject of a specific gift is destroyed, damaged, lost, stolen or otherwise
9 subject to any casualty compensable by insurance, the specific beneficiary has the
10 right to the following amounts, if available under the governing instrument, reduced
11 by any amount expended or incurred to restore or repair the property:

12 (a) Any insurance proceeds paid with respect to the property after the
13 decedent's death, together with the incidents of the specific gift.

14 (b) A general pecuniary transfer equivalent to any insurance proceeds paid to,
15 or for the benefit of, the decedent within one year of the decedent's death.

16 **(4) CONDEMNATION AWARD.** (a) Subject to sub. (6), if property that is the subject
17 of a specific gift is taken by condemnation prior to the death of the person who
18 executed the governing instrument, the specific beneficiary has the right to the
19 following amounts if available under the governing instrument:

20 1. Any amount of the condemnation award unpaid at the time of death.

21 2. A general pecuniary transfer equivalent to the amount of an award paid to,
22 or for the benefit of, the person who executed the governing instrument within one
23 year of that person's death.

SENATE BILL 368

1 (b) In the event of an appeal in a condemnation proceeding, the award is, for
2 purposes of this section, limited to the amount established on the appeal. Acceptance
3 of an agreed price or a jurisdictional offer is a sale under sub. (2).

4 (5) SALE OR LOSS OF PROPERTY OF AN INCOMPETENT. Subject to sub. (6), if property
5 that is the subject of a specific gift is sold by a guardian or conservator of the person
6 who executed the governing instrument, or if a condemnation award or insurance
7 proceeds are paid to a guardian or conservator, the specific beneficiary has the right
8 to a general pecuniary transfer equivalent to the proceeds of the sale or the
9 condemnation award, or the insurance proceeds, reduced by any amount expended
10 or incurred to restore or repair the property if the funds are available under the
11 governing instrument. This provision does not apply if the person who executed the
12 governing instrument, subsequent to the sale or award or receipt of insurance
13 proceeds, is adjudicated competent and survives such adjudication for a period of one
14 year; but in such event a sale by a guardian or conservator within 2 years of that
15 person's death is a sale by that person for purposes of sub. (2).

16 (6) LIMITATIONS. (a) This section is inapplicable if any of the following applies:

17 1. The governing instrument, either expressly or as construed from extrinsic
18 evidence, shows the intent that a transfer fail under the particular circumstances.

19 2. The person who executed the governing instrument gives property during
20 the person's lifetime to the specific beneficiary with the intent of satisfying the
21 specific gift. Extrinsic evidence may be used to construe that intent.

22 (b) If part of the property that is the subject of the specific gift is destroyed,
23 damaged, sold or condemned, the specific gift of any remaining interest in the
24 property is not affected by this section; but this section applies to the part affected
25 by the destruction, damage, sale or condemnation.

SENATE BILL 368

1 (c) The amount that the specific beneficiary receives under subs. (2) to (5) is
2 reduced by any expenses of the sale, by the expenses of collection of the proceeds of
3 insurance, sale, or condemnation award and by any amount by which the income tax
4 of the decedent or the decedent's estate is increased because of items covered by this
5 section. Expenses include legal fees paid or incurred.

6 **854.09 Advancement; satisfaction. (1)** A gift that the decedent made
7 during his or her lifetime, including an incomplete gift that became complete on the
8 decedent's death, is treated as a full or partial satisfaction of a transfer at death to
9 an heir under s. 852.01 (1) or a transferee under a governing instrument executed
10 by the decedent only if at least one of the following applies:

11 (a) The governing instrument, if any, either expressly or as construed from
12 extrinsic evidence, provides that the gift be taken into account.

13 (b) The decedent declared in a document, either expressly or as construed from
14 extrinsic evidence, that the gift is in satisfaction of, or an advance against, what the
15 transferee would receive at the decedent's death, whether or not the document was
16 contemporaneous with the gift.

17 (c) The transferee acknowledged in writing before or after the decedent's death,
18 either expressly or as construed from extrinsic evidence, that the gift is in
19 satisfaction of, or an advance against, what the transferee would receive at the
20 decedent's death.

21 **(2)** For partial satisfaction, property given during life is valued as of the time
22 that the transferee came into possession or enjoyment of the property or at the death
23 of the person who executed the governing instrument, whichever occurs first.

24 **(3)** If the transferee fails to survive the person who executed the governing
25 instrument, the gift is treated as a full or partial satisfaction of the transfer, unless

SENATE BILL 368

1 the transferor has declared otherwise in a document, either expressly or as construed
2 from extrinsic evidence.

3 **854.10 Choice of law.** The meaning and legal effect of a governing instrument
4 are determined by the local law of the state selected by the transferor in the
5 governing instrument, unless the application of that law is contrary to s. 861.02 or
6 861.31 or any other public policy of this state otherwise applicable to the disposition.

7 **854.11 Gift of securities. (1) DEFINITION.** In this section, "securities" includes
8 all of the following:

9 (a) Any note, stock, treasury stock, bond, debenture, evidence of indebtedness,
10 collateral trust certificate, transferable share or voting trust certificate.

11 (b) Any certificate of interest or participation in an oil, gas or mining title or
12 lease or in payments out of production under such a title or lease.

13 (c) Any interest or instrument commonly known as a security.

14 (d) Any certificate of interest or participation in, any temporary or interim
15 certificate, receipt or certificate of deposit for, or any warrant or right to subscribe
16 to or purchase, any of the instruments or interests specified in pars. (a) to (c).

17 **(2) INCREASE IN SECURITIES; ACCESSIONS.** Except as provided in sub. (4), if a
18 person executes a governing instrument that transfers securities and at the time of
19 the execution or immediately after execution the described securities are in fact
20 governed by the instrument, the transfer includes additional securities that are
21 governed by the instrument at the person's death if all of the following apply:

22 (a) The additional securities were acquired after the governing instrument was
23 executed.

24 (b) The additional securities were acquired as a result of ownership of the
25 described securities.

SENATE BILL 368

1 (c) The additional securities are any of the following types:

2 1. Securities of the same organization acquired as a result of a plan of
3 reinvestment.

4 2. Securities of the same organization acquired by action initiated by the
5 organization or any successor, related or acquiring organization, excluding any
6 acquired by exercise of purchase options.

7 3. Securities of another organization acquired as a result of a merger,
8 consolidation, reorganization or other distribution by the organization or any
9 successor, related or acquiring organization.

10 **(3) GIFT OF SECURITIES CONSTRUED AS SPECIFIC.** Except as provided in sub. (4),
11 a transfer of a stated number of shares or amount of securities is construed to be a
12 specific gift if the same or a greater number of shares or amount of the securities was
13 governed by the instrument at the time of, or immediately after, execution of the
14 instrument, even if the instrument does not describe the securities more specifically
15 or qualify the description by a possessive pronoun such as “my”.

16 **(4) CONTRARY INTENT.** This section does not apply if there is a finding of contrary
17 intent of the person who executed the governing instrument. Extrinsic evidence may
18 be used to construe that intent.

19 **854.13 (2) (f) Disclaimer by guardian or conservator.** A guardian of the estate
20 or a conservator appointed under ch. 880 may disclaim on behalf of his or her ward,
21 with court approval, if the ward is entitled to disclaim under this section.

22 (g) *Disclaimer by agent under power of attorney.* An agent under a power of
23 attorney may disclaim on behalf of the person who granted the power of attorney if
24 all of the following apply:

SENATE BILL 368

1 1. The person who granted the power of attorney is entitled to disclaim under
2 this section.

3 2. The power of attorney specifically grants the power to disclaim.

4 **(8) DEVOLUTION OF DISCLAIMED INTEREST IN JOINT TENANCY.** A disclaimed interest
5 in a joint tenancy passes to the decedent's probate estate.

6 **(9) DEVOLUTION OF DISCLAIMED INTEREST IN SURVIVORSHIP MARITAL PROPERTY.** A
7 disclaimed interest in survivorship marital property passes to the decedent's probate
8 estate.

9 **(12) (b)** Any disclaimer that meets the requirements of section 2518 of the
10 Internal Revenue Code, or the requirements of any other federal law relating to
11 disclaimers, constitutes an effective disclaimer under this section.

12 **(13) CONSTRUCTION OF EFFECTIVE DATE.** In this section, the effective date of a
13 transfer under a revocable governing instrument is the date on which the person
14 with the power to revoke the transfer no longer has that power or the power to
15 transfer the legal or equitable ownership of the property that is the subject of the
16 transfer.

17 **854.14 Beneficiary who kills decedent. (1) DEFINITION.** In this section,
18 "disposition of property" means a transfer, including by appointment, of property or
19 any other benefit to a beneficiary designated in a governing instrument or under a
20 statute.

21 **(2) REVOCATION OF BENEFITS.** Except as provided in sub. (6), the unlawful and
22 intentional killing of the decedent does all of the following:

23 (a) Revokes a provision in a governing instrument that, by reason of the
24 decedent's death, does any of the following:

25 1. Transfers or appoints property to the killer.

SENATE BILL 368

1 2. Confers a power of appointment on the killer.

2 3. Nominates or appoints the killer to serve in any fiduciary or representative
3 capacity, including personal representative, executor, trustee or agent.

4 (b) Severs the interests of the decedent and killer in property held by them as
5 joint tenants with the right of survivorship or as survivorship marital property and
6 transforms the interests of the decedent and the killer into tenancies in common or
7 marital property, whichever is appropriate.

8 (c) Revokes every statutory right or benefit to which the killer may have been
9 entitled by reason of the decedent's death.

10 **(3) EFFECT OF REVOCATION.** Except as provided in sub. (6), provisions of a
11 governing instrument that are revoked by this section are given effect as if the killer
12 disclaimed all revoked provisions or, in the case of a revoked nomination in a
13 fiduciary or representative capacity, as if the killer predeceased the decedent. Except
14 as provided in sub. (6), the killer's share of the decedent's intestate estate, if any,
15 passes as if the killer had disclaimed his or her intestate share under s. 854.13.

16 **(4) WRONGFUL ACQUISITION OF PROPERTY.** Except as provided in sub. (6), a
17 wrongful acquisition of property by a killer not covered by this section shall be
18 treated in accordance with the principle that a killer cannot profit from his or her
19 wrongdoing.

20 **(5) UNLAWFUL AND INTENTIONAL KILLING; HOW DETERMINED.** (a) After all right to
21 appeal has been exhausted, a judgment establishing criminal accountability for the
22 unlawful and intentional killing of the decedent conclusively establishes the
23 convicted individual as the decedent's killer for purposes of this section and s. 861.02
24 (8).

SENATE BILL 368

1 (b) After all right of appeal has been exhausted, an adjudication of delinquency
2 on the basis of an unlawful and intentional killing of the decedent conclusively
3 establishes the adjudicated individual as the decedent's killer for purposes of this
4 section and s. 861.02 (8).

5 (c) In the absence of a judgment establishing criminal accountability or an
6 adjudication of delinquency, the court, upon the petition of an interested person,
7 shall determine whether, under the preponderance of evidence standard, the killing
8 was unlawful and intentional for purposes of this section and s. 861.02 (8).

9 **(6) EXCEPTIONS.** This section does not apply if any of the following applies:

10 (a) The court finds that, under the factual situation created by the killing, the
11 decedent's wishes would best be carried out by means of another disposition of the
12 property.

13 (b) The decedent provided in his or her will, by specific reference to this section,
14 that this section does not apply.

15 **854.15 Revocation of provisions in favor of former spouse. (1)**

16 **DEFINITIONS.** In this section:

17 (a) "Disposition of property" means a transfer, including by appointment, of
18 property or any other benefit to a beneficiary designated in a governing instrument.

19 (b) "Divorce, annulment or similar event" means any divorce, any annulment
20 or any other event or proceeding that would exclude a spouse as a surviving spouse
21 under s. 851.30.

22 (c) "Former spouse" means a person whose marriage to the decedent has been
23 the subject of a divorce, annulment or similar event.

SENATE BILL 368

1 (d) "Relative of the former spouse" means an individual who is related to the
2 former spouse by blood, adoption or marriage and who, after the divorce, annulment
3 or similar event, is not related to the decedent by blood, adoption or marriage.

4 (e) "Revocable", with respect to a disposition, provision or nomination, means
5 one under which the decedent, at the time of the divorce, annulment or similar event,
6 was alone empowered, by law or under the governing instrument, to cancel the
7 designation in favor of the former spouse or former spouse's relative, whether or not
8 the decedent was then empowered to designate himself or herself in place of the
9 former spouse or the former spouse's relative, and whether or not the decedent then
10 had the capacity to exercise the power.

11 **(2) SCOPE.** This section applies only to governing instruments that were
12 executed by the decedent before the occurrence of a divorce, annulment or similar
13 event with respect to his or her marriage to the former spouse.

14 **(3) REVOCATION UPON DIVORCE.** Except as provided in subs. (5) and (6), a divorce,
15 annulment or similar event does all of the following:

16 (a) Revokes any revocable disposition of property made by the decedent to the
17 former spouse or a relative of the former spouse in a governing instrument.

18 (b) Revokes any disposition created by law to the former spouse or a relative
19 of the former spouse.

20 (c) Revokes any revocable provision made by the decedent in a governing
21 instrument conferring a power of appointment on the former spouse or a relative of
22 the former spouse.

23 (d) Revokes the decedent's revocable nomination of the former spouse or a
24 relative of the former spouse to serve in any fiduciary or representative capacity.

SENATE BILL 368

1 (e) Severs the interests of the decedent and former spouse in property held by
2 them as joint tenants with the right of survivorship or as survivorship marital
3 property and transforms the interests of the decedent and former spouse into
4 tenancies in common.

5 (4) EFFECT OF REVOCATION. Except as provided in subs. (5) and (6), provisions
6 of a governing instrument that are revoked by this section are given effect as if the
7 former spouse and relatives of the former spouse disclaimed the revoked provisions
8 or, in the case of a revoked nomination in a fiduciary or representative capacity, as
9 if the former spouse and relatives of the former spouse died immediately before the
10 divorce, annulment or similar event.

11 (5) EXCEPTIONS. This section does not apply if any of the following applies:

12 (a) The express terms of a governing instrument provide otherwise.

13 (b) The express terms of a court order provide otherwise.

14 (c) The express terms of a contract relating to the division of the decedent's and
15 former spouse's property made between the decedent and the former spouse before
16 or after the marriage or the divorce, annulment or similar event provide otherwise.

17 (d) The divorce, annulment or similar event is nullified.

18 (e) The decedent and the former spouse have remarried.

19 (f) There is a finding of the decedent's contrary intent. Extrinsic evidence may
20 be used to construe that intent.

21 (6) REVOCATION OF NONTESTAMENTARY PROVISION IN MARITAL PROPERTY AGREEMENT.

22 The effect of a judgment of annulment, divorce or legal separation on marital
23 property agreements under s. 766.58 is governed by s. 767.266 (1).

24 **854.18 Order in which assets apportioned; abatement.** (1) (a) Except as
25 provided in sub. (3) or in connection with the share of the surviving spouse who elects

SENATE BILL 368

1 to take an elective share in deferred marital property under s. 861.02, a spouse who
2 takes under s. 853.11 (2) or a child who takes under s. 853.25, shares of distributees
3 abate, without any preference or priority as between real and personal property, in
4 the following order:

5 1. If the governing instrument is a will, property subject to intestacy.

6 2. Residuary transfers or devises under the governing instrument.

7 3. General transfers or devises under the governing instrument.

8 4. Specific transfers or devises under the governing instrument.

9 (b) For purposes of abatement, a general transfer or devise charged on any
10 specific property or fund is a specific transfer to the extent of the value of the property
11 on which it is charged, and upon the failure or insufficiency of the property on which
12 it is charged, it is a general transfer to the extent of the failure or insufficiency.

13 (2) (a) Abatement within each classification is in proportion to the amount of
14 property that each of the beneficiaries would have received if full distribution of the
15 property had been made in accordance with the terms of the governing instrument.

16 (b) If the subject of a preferred transfer is sold or used incident to
17 administration of an estate, abatement shall be achieved by appropriate
18 adjustments in, or contribution from, other interests in the remaining assets.

19 (3) If the governing instrument expresses an order of abatement, or if the
20 decedent's estate plan or the express or implied purpose of the transfer would be
21 defeated by the order of abatement under sub. (1), the shares of the distributees
22 abate as necessary to give effect to the intention of the transferor.

23 **854.19 Penalty clause for contest.** A provision in a governing instrument
24 that prescribes a penalty against an interested person for contesting the governing
25 instrument or instituting other proceedings relating to the governing instrument

1 may not be enforced if the court determines that the interested person had probable
2 cause for instituting the proceedings.

3 **854.20 Status of adopted persons.**

4 (3) SEQUENTIAL ADOPTION. Subject to sub. (4), if an adoptive parent dies or his
5 or her parental rights are terminated in a legal proceeding and the adopted child is
6 subsequently adopted by another person, the former adoptive parent is considered
7 to be a birth parent for purposes of this section.

8 (4) APPLICABILITY. Subsections (1), (2) and (3) apply only if at least one of the
9 following applies:

10 (a) The decedent or transferor is the adoptive parent or adopted child.

11 (b) The adopted person was a minor at the time of adoption.

12 (c) The adopted person was raised as a member of the household by the adoptive
13 parent from the child's 15th birthday or before.

14 (5) CONTRARY INTENT. This section does not apply if the transfer is made under
15 a governing instrument and there is a finding of contrary intent of the person who
16 executed the instrument. Extrinsic evidence may be used to construe that intent.

17 **854.21 Persons included in family groups or classes.** (1) ADOPTED
18 PERSONS. (a) Except as provided in par. (b) or sub. (7), a gift of property by a governing
19 instrument to a class of persons described as issue, lawful issue, children,
20 grandchildren, descendants, heirs, heirs of the body, next of kin, distributees or the
21 like includes a person adopted by a person whose birth child would be a member of
22 the class, and issue of the adopted person, if the conditions for membership in the
23 class are otherwise satisfied and any of the following applies:

24 1. The transferor is the adoptive parent or adopted child.

25 2. The adopted person was a minor at the time of adoption.

SENATE BILL 368

1 3. The adopted person was raised as a member of the household by the adoptive
2 parent from the child's 15th birthday or before.

3 (b) Except as provided in sub. (7), a gift under par. (a) excludes a birth child and
4 his or her issue otherwise within the class if the birth child has been adopted and
5 would cease to be a child of the birth parent under s. 854.20 (2).

6 **(2) INDIVIDUALS BORN TO UNMARRIED PARENTS.** (a) Subject to par. (b) and sub. (7),
7 individuals born to unmarried parents are included in class gifts and other terms of
8 relationship in accordance with s. 852.05.

9 (b) In addition to the requirements of par. (a) and subject to the provisions of
10 sub. (7), in construing a disposition by a transferor who is not the birth parent, an
11 individual born to unmarried parents is not considered to be the child of a birth
12 parent unless that individual lived while a minor as a regular member of the
13 household of that birth parent or of that birth parent's parent, brother, sister, spouse
14 or surviving spouse.

15 **(3) RELATIVES BY MARRIAGE.** Subject to sub. (7), terms of family relationship in
16 statutes or governing instruments that do not differentiate between relationships by
17 blood and relationships by marriage are construed to exclude relatives by marriage.

18 **(4) RELATIVES OF THE HALF-BLOOD.** Subject to sub. (7), terms of family
19 relationship in statutes or governing instruments that do not differentiate between
20 relationships by the half-blood and relationships by the full-blood are construed to
21 include both types of relationships.

22 **(5) POSTHUMOUS ISSUE.** Subject to sub. (7), if a statute or governing instrument
23 transfers an interest to a group of persons described as a class, such as "issue",
24 "children", "nephews and nieces" or any other class, a person conceived at the time
25 the membership in the class is determined and subsequently born alive is entitled

SENATE BILL 368

1 to take as a member of the class if that person otherwise satisfies the conditions for
2 class membership and survives at least 120 hours past birth.

3 (6) PERSON RELATED THROUGH 2 LINES. Subject to sub. (7), a person who is eligible
4 to be a transferee under a statute or governing instrument through 2 lines of
5 relationship is limited to one share, based on the relationship that entitles the person
6 to the larger share.

7 (7) CONTRARY INTENT. This section does not apply if the transfer is made under
8 a governing instrument and there is a finding of contrary intent of the person who
9 executed the governing instrument. Extrinsic evidence may be used to construe that
10 intent.

854.22 Form of distribution for transfers to family groups or classes.

11 (1) INTERESTS IN HEIRS, NEXT OF KIN AND THE LIKE. Subject to sub. (4), if a statute or
12 governing instrument specifies that a present or future interest is to be created in
13 a designated individual's "heirs", "heirs at law", "next of kin", "relatives", "family" or
14 a term that has a similar meaning, the property passes to the persons, including the
15 state, to whom it would pass and in the shares in which it would pass under the laws
16 of intestacy of the designated individual's domicile, as if the designated individual
17 had died immediately before the transfer was to take effect in possession or
18 enjoyment. If the designated individual's surviving spouse is living and remarried
19 when the transfer is to take effect in possession or enjoyment, the surviving spouse
20 is not an heir of the designated individual.

21 (2) TRANSFERS TO DESCENDANTS, ISSUE AND THE LIKE. Subject to sub. (4), if a
22 statute or governing instrument creates a class gift in favor of a designated
23 individual's "descendants", "issue" or "heirs of the body" the property is distributed
24 among the class members who are living when the interest is to take effect in
25

SENATE BILL 368

1 possession or enjoyment in the shares that they would receive under the laws of
2 intestacy of the designated individual's domicile, as if the designated individual had
3 then died owning the subject matter of the class gift.

4 **(3) DOCTRINE OF WORTHIER TITLE ABOLISHED.** The doctrine of worthier title is
5 abolished as a rule of law and as a rule of construction. Language in a governing
6 instrument describing the beneficiaries of a disposition as the transferor's "heirs",
7 "heirs at law", "next of kin", "distributees", "relatives" or "family", or a term that has
8 a similar meaning, does not create or presumptively create a reversionary interest
9 in the transferor.

10 **(4) CONTRARY INTENT.** This section does not apply if the transfer is made under
11 a governing instrument and there is a finding of contrary intent of the person who
12 executed the governing instrument. Extrinsic evidence may be used to construe that
13 intent.

14 **854.23 Protection of payers and other 3rd parties. (1) LIABILITY DEPENDS**
15 **ON NOTICE.** (a) A payer or other 3rd party is not liable for having transferred property
16 to a beneficiary designated in a governing instrument who, under this chapter, is not
17 entitled to the property, or for having taken any other action in good faith reliance
18 on the beneficiary's apparent entitlement under the terms of the governing
19 instrument, before the payer or other 3rd party received written notice of a claimed
20 lack of entitlement under this chapter. However, a payer or other 3rd party is liable
21 for a payment made or other action taken after the payer or other 3rd party received
22 written notice of a claimed lack of entitlement under this chapter.

23 (b) Severance of a joint interest under the provisions of this chapter does not
24 affect any 3rd-party interest in property acquired for value and in good faith reliance
25 on an apparent title by survivorship, unless a document declaring the severance has

SENATE BILL 368

1 been noted, registered, filed or recorded in records appropriate to the kind and
2 location of the property that are relied upon, in the ordinary course of transactions
3 involving such property, as evidence of ownership.

4 (2) MANNER OF NOTICE. A claimant shall mail written notice of a claimed lack
5 of entitlement under sub. (1) to the 3rd party's main office or home by registered or
6 certified mail, return receipt requested, or serve the claim upon the 3rd party in the
7 same manner as a summons in a civil action.

8 (3) DEPOSIT OF PROPERTY WITH COURT. (a) Upon receipt of written notice of a
9 claimed lack of entitlement under this chapter, a 3rd party may transfer property
10 held by it to the court having jurisdiction of the probate proceedings relating to the
11 decedent's estate. If no proceedings have been commenced, the transfer may be made
12 to the court having jurisdiction of probate proceedings relating to decedents' estates
13 located in the county of the decedent's residence. The court shall hold the property
14 and, upon its determination of the owner, shall order disbursement in accordance
15 with the determination.

16 (b) Property transferred to the court discharges the 3rd party from all claims
17 for the property.

18 **854.24 Protection of buyers.** A person who purchases property for value or
19 who receives property in partial or full satisfaction of a legally enforceable obligation
20 is neither obligated under this chapter to return the property nor liable under this
21 chapter for the value of the property, unless the person has notice as described in s.
22 854.23 (2).

23 **854.25 Personal liability of recipients not for value.** (1) ORIGINAL
24 RECIPIENTS. A person who, not for value, receives property to which the person is not
25 entitled under this chapter shall return the property. If the property is not returned,

SENATE BILL 368

1 the recipient shall be personally liable for the value of the property to the person who
2 is entitled to it under this chapter, regardless of whether the recipient has the
3 property, its proceeds or property acquired with the property or its proceeds.

4 **(2) SUBSEQUENT RECIPIENTS.** (a) If a recipient described in sub. (1) gives all or
5 part of the property described in sub. (1) to a subsequent recipient, not for value, the
6 subsequent recipient shall return the property. If the property is not returned, the
7 subsequent recipient shall be personally liable to the person who is entitled to it
8 under this chapter for the value received, if the subsequent recipient has the
9 property, its proceeds or property acquired with the property or its proceeds.

10 (b) If the subsequent recipient described in par. (a) does not have the transfer
11 described, its proceeds or the property acquired with the property or its proceeds, but
12 knew or should have known of his or her liability under this section, the subsequent
13 recipient remains personally liable to the person who is entitled to it under this
14 chapter for the value received.

15 **(3) MODE OF SATISFACTION.** On petition of the person entitled to the property
16 under this chapter showing that the mode of satisfaction chosen by the recipient in
17 sub. (1) or (2) will create a hardship for the entitled person, the court may order that
18 a different mode of satisfaction be used.

19 **854.26 Effect of federal preemption.** If any provision in this chapter is
20 preempted by federal law with respect to property covered by this chapter, a person
21 who receives property, other than for full consideration, which the person is not
22 entitled to receive under this chapter is subject to s. 854.25.

23 **SECTION 176.** 856.05 (5) of the statutes is created to read:

SENATE BILL 368

1 856.05 (5) APPLICABILITY OF SECTION. This section applies to wills, codicils,
2 documents incorporated by reference under s. 853.32 (1) or (2) and information
3 needed for proof of a lost will under s. 856.17.

4 **SECTION 177.** 856.16 of the statutes is created to read:

5 **856.16 Self-proved will.** A self-proving acknowledgment and affidavit
6 included in a will are governed by s. 853.04.

7 **SECTION 178.** 857.01 of the statutes is amended to read:

8 **857.01 Ownership in personal representative; management and**
9 **control.** Upon his or her letters being issued by the court, the personal
10 representative succeeds to the interest of the decedent in all property of the decedent.
11 The personal representative or surviving spouse may petition the court for an order
12 determining the classification of property under ch. 766, and for other equitable
13 relief necessary for management and control of the marital property during the
14 administration of the estate. The court may make any decree under ch. 766,
15 including a decree that the property be titled in accordance with its classification, to
16 assist the personal representative or surviving spouse in managing and controlling
17 the marital property and the decedent's property other than marital property during
18 administration of the estate. During administration, the management and control
19 rules under s. 766.51 apply to the property of a decedent spouse which is subject to
20 administration and to the property of the surviving spouse. With regard to property
21 subject to the election of the surviving spouse under s. 861.02 (1), the personal
22 representative may manage and control the property while the property is subject
23 to administration. The personal representative shall determine when, during
24 administration, property shall be distributed to satisfy an election under s. 861.02
25 (1).

SENATE BILL 368

1 **SECTION 179.** 857.015 of the statutes is amended to read:

2 **857.015 Management and control of certain business property by**
3 **holding spouse.** A spouse who holds property described under s. 766.70 (3) (a), (b)
4 or (d) which is not also held by the other spouse may direct in a will or other signed
5 writing that the marital property interest of the nonholding spouse in such property
6 ~~and the election under s. 861.02 (1) against such property~~ be satisfied as provided
7 under ~~ss. s. 861.015 and 861.02 (2)~~. The holding spouse shall identify in a will or
8 other signed writing the property described under s. 766.70 (3) (a), (b) or (d) to which
9 the directive applies. The signature of the holding spouse on a directive other than
10 a will shall be acknowledged, attested or witnessed under s. 706.07. The estate of
11 the holding spouse may not execute a directive under this section. If at the death of
12 a spouse the surviving spouse is the holding spouse, the surviving spouse may
13 execute a directive under this section if executed within 90 days after the decedent
14 spouse's death.

15 **SECTION 180.** 858.01 (title) of the statutes is amended to read:

16 **858.01 (title) Personal representative files; presumptions.**

17 **SECTION 181.** 858.01 (1) of the statutes is renumbered 858.01.

18 **SECTION 182.** 858.01 (2) of the statutes is repealed.

19 **SECTION 183.** 859.40 of the statutes is amended to read:

20 **859.40 Creditor's action for property not inventoried.** Whenever there
21 is reason to believe that the estate of a decedent as set forth in the inventory may be
22 insufficient to pay the decedent's debts, a creditor whose claim has been allowed may,
23 on behalf of all, bring an action to reach and subject to sale any property ~~or interest~~
24 ~~therein~~ not included in the inventory, which is liable for the payment of debts. The
25 creditor's action shall not be brought to trial until the insufficiency of the estate in

SENATE BILL 368

1 the hands of the personal representative is ascertained; if found likely that the assets
2 may be insufficient, the action shall be brought to trial. If the action is tried, any
3 property ~~or interest therein~~ which ought to be subjected to the payment of the debts
4 of the decedent shall be sold in the action and the net proceeds used to pay such debts
5 and to reimburse the creditor for the reasonable expenses and attorney fees incurred
6 by the creditor in the action as approved by the court.

7 **SECTION 184.** 859.41 of the statutes is amended to read:

8 **859.41 Creditor's action for property fraudulently sold by decedent.**

9 Whenever there is reason to believe that the estate of a decedent as set forth in the
10 inventory may be insufficient to pay the decedent's debts, and the decedent conveyed
11 any property ~~or any interest therein~~ with intent to defraud the decedent's creditors
12 or to avoid any duty, or executed conveyances void as against creditors, any creditor
13 whose claim has been allowed may, on behalf of all, bring an action to reach any
14 property and subject it to sale ~~any property or interest therein~~. The creditor's action
15 shall not be brought to trial until the insufficiency of the estate in the hands of the
16 personal representative is ascertained; if found likely that the assets may be
17 insufficient, the action shall be brought to trial. If the action is tried any property
18 ~~or interest therein~~ which ought to be subjected to the payment of the debts of the
19 decedent shall be sold in the action and the net proceeds used to pay such debts and
20 to reimburse the creditor for the reasonable expenses and attorney fees incurred by
21 the creditor in such action as approved by the court.

22 **SECTION 185.** 861.015 (1) of the statutes is amended to read:

23 861.015 (1) If following the death of a spouse property is subject to a directive
24 under s. 857.015, the marital property interest of the nonholding spouse in the
25 property shall be satisfied within one year after the decedent spouse's death from

SENATE BILL 368

1 other property which is of equal clear market value at the time of satisfaction. Except
2 as provided under sub. (3), if the interests interest of the nonholding spouse under
3 this section and s. 861.02 (2) are is not satisfied within one year after the decedent
4 spouse's death, this section does not apply and the nonholding spouse's marital
5 property interest in the property subject to the directive continues as if the directive
6 had not been made.

7 **SECTION 186.** 861.015 (3) (intro.) of the statutes is amended to read:

8 861.015 (3) (intro.) If the interests interest of the nonholding spouse under this
9 section and s. 861.02 (2) are is not satisfied within one year after the decedent
10 spouse's death because the clear market value of the property subject to the directive
11 has not been determined, the court having jurisdiction of the decedent spouse's
12 estate shall do either of the following:

13 **SECTION 187.** 861.015 (3) (a) of the statutes is amended to read:

14 861.015 (3) (a) Order that the interests interest of the nonholding spouse shall
15 be satisfied after the determination of clear market value, at a date specified by the
16 court; ~~or,~~

17 **SECTION 188.** 861.015 (3) (b) of the statutes is amended to read:

18 861.015 (3) (b) Order that the interests interest of the nonholding spouse shall
19 be satisfied before the determination of clear market value based on an estimate of
20 the clear market value, subject to any necessary adjustment upon final
21 determination of clear market value.

22 **SECTION 189.** Subchapter II (title) of chapter 861 [precedes 861.018] of the
23 statutes is repealed and recreated to read:

24

CHAPTER 861

SENATE BILL 368

SUBCHAPTER II

ELECTIVE SHARE IN

DEFERRED MARITAL PROPERTY

SECTION 190. 861.018 of the statutes is created to read:

861.018 Definitions. In this subchapter:

(1) "Augmented deferred marital property estate" means the property under s. 861.02 (2).

(2) "Deferred individual property" means any property that satisfies all of the following:

(a) Is not classified by ch. 766.

(b) Was brought to the marriage or acquired while the spouses were married.

(c) Would have been classified as individual property under ch. 766 if the property had been acquired when ch. 766 applied.

(3) "Nonadverse party" means a person who has a power relating to a trust or other property arrangement but who does not have a substantial beneficial interest that would be adversely affected by exercise or nonexercise of that power, except that "nonadverse party" does not include a person who has a general power of appointment over property, with respect to that property.

(4) "Power" includes a power to designate the beneficiary of a beneficiary designation.

(5) "Power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(6) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent held a power to create a present or future interest in himself or herself, his or her creditors, his or

SENATE BILL 368

1 her estate or creditors of his or her estate and a power to revoke or invade the
2 principal of a trust or other property arrangement, whether or not the decedent had
3 the capacity to exercise the power at the time.

4 (7) "Property" has the meaning given in s. 851.27 and includes values subject
5 to a beneficiary designation.

6 (8) "Right to income" includes a right to payments under a commercial or
7 private annuity, an annuity trust, a unitrust or a similar arrangement.

8 (9) "Transfer" includes, but is not limited to, the following:

9 (a) An exercise or release of a presently exercisable general power of
10 appointment held by the decedent.

11 (b) A lapse at death of a presently exercisable general power of appointment
12 held by the decedent.

13 (c) An exercise, release or lapse of either of the following:

14 1. A general power of appointment that the decedent created in himself or
15 herself.

16 2. A power under s. 861.03 (3) that the decedent conferred on a nonadverse
17 party.

18 **SECTION 191.** 861.02 of the statutes is repealed and recreated to read:

19 **861.02 Deferred marital property elective share.** (1) AMOUNT. The
20 surviving spouse has the right to elect an amount equal to no more than 50% of the
21 augmented deferred marital property estate as determined under sub. (2).

22 (2) AUGMENTED DEFERRED MARITAL PROPERTY ESTATE. (a) If the presumption of
23 marital property under s. 766.31 (2) is rebutted as to the classification of an asset or
24 a portion thereof, the asset or portion is presumed to be deferred marital property.

SENATE BILL 368

1 (b) The augmented deferred marital property estate is the total value of the
2 deferred marital property of the spouses, irrespective of where the property was
3 acquired or where the property is currently located, including real property located
4 in another jurisdiction. It includes all types of property that fall within any of the
5 following categories:

6 1. Probate and nonprobate transfers of the decedent's deferred marital
7 property under s. 861.03 (1) to (3).

8 2. Decedent's gifts of deferred marital property made during the 2 years before
9 the decedent's death under s. 861.03 (4).

10 3. Deferred marital property of the surviving spouse under s. 861.04.

11 **(3) CALCULATION OF PROPERTY INTERESTS.** Exclusions from the augmented
12 deferred marital property estate, valuation of included property and reduction for
13 expenses and claims are governed by s. 861.05.

14 **(4) SATISFACTION.** Satisfaction of the augmented deferred marital property
15 elective share is governed by ss. 861.06, 861.07 and 861.11.

16 **(5) PROCEEDINGS.** Proceedings for the election are governed by ss. 861.08 and
17 861.09.

18 **(6) WAIVER.** Waiver of the deferred marital property elective share is governed
19 by s. 861.10.

20 **(7) APPLICABILITY OF ELECTION.** (a) Unless the right has been waived under s.
21 861.10 or other limitations of this subchapter apply, the surviving spouse is eligible
22 to make the election if at the time of the decedent's death the decedent is domiciled
23 in this state.

SENATE BILL 368

1 (b) If a decedent who is not domiciled in this state owns real property in this
2 state, the right of the surviving spouse to take an elective share in that property is
3 governed by s. 861.20.

4 (8) SPECIAL PROVISION IF SURVIVING SPOUSE CAUSED DEATH OF DECEDENT. If the
5 surviving spouse unlawfully and intentionally kills the decedent, as determined
6 under s. 854.14 (5), the estate of the decedent shall have the right to elect no more
7 than 50% of the augmented deferred marital property estate as determined under
8 sub. (2). The court shall construe the provisions of ss. 861.03 to 861.11 as necessary
9 to achieve the intent of this paragraph.

10 **SECTION 192.** 861.03 of the statutes is repealed and recreated to read:

11 **861.03 Augmented deferred marital property estate: decedent's**
12 **probate property and nonprobate or other property transfers.** Subject to s.
13 861.05, the augmented deferred marital property estate includes all of the following:

14 (1) DEFERRED MARITAL PROPERTY IN DECEDENT'S PROBATE ESTATE. The value of
15 deferred marital property in the decedent's probate estate.

16 (2) DEFERRED MARITAL PROPERTY PASSING NONPROBATE AT DECEDENT'S DEATH. The
17 value of deferred marital property owned or owned in substance by the decedent
18 immediately before death that passed outside probate at the decedent's death,
19 including the following:

20 (a) The decedent's fractional interest in deferred marital property that was
21 held by the decedent with the right of survivorship.

22 (b) The decedent's ownership interest in deferred marital property that was
23 held by the decedent in a form payable or transferable on death, including deferred
24 employment benefit plans, individual retirement accounts, annuities and transfers
25 under s. 766.58 (3) (f), or in coownership with the right of survivorship.

SENATE BILL 368

1 (c) Deferred marital property in the form of proceeds of insurance on the life
2 of the decedent, including accidental death benefits, that were payable at the
3 decedent's death, if the decedent owned the insurance policy immediately before
4 death or if the decedent alone and immediately before death held a presently
5 exercisable general power of appointment over the policy or its proceeds.

6 (d) Deferred marital property over which the decedent alone, immediately
7 before death, held a presently exercisable general power of appointment, to the
8 extent that the property passed at the decedent's death by exercise, release, lapse,
9 default or otherwise.

10 **(3) DEFERRED MARITAL PROPERTY TRANSFERRED WITH RETAINED RIGHTS OR BENEFITS.**

11 (a) The augmented deferred marital property estate includes the value of any
12 deferred marital property transferred by the decedent in which the decedent
13 retained rights or benefits, including but not limited to the following:

14 1. Deferred marital property in which the decedent retained the right to
15 possession, use, enjoyment or income and that was irrevocably transferred, to the
16 extent that the decedent's right terminated at or continued beyond the decedent's
17 death.

18 2. Deferred marital property in which the decedent retained the right, either
19 alone or in conjunction with any person, to designate the persons who shall possess
20 or enjoy the property or the income therefrom, to control the time at which
21 designated persons shall possess or enjoy the property or income therefrom, or to
22 alter or amend the terms of the transfer of the property, to the extent that the
23 decedent's right terminated at or continued beyond the decedent's death.

24 3. Any transfer of deferred marital property, including transfer of an income
25 interest, in which the decedent created a power of appointment, including the power

SENATE BILL 368

1 to revoke or terminate the transfer or to consume, invade or dispose of the principal
2 or income, if the power was exercisable by the decedent alone, by the decedent in
3 conjunction with another person or by a nonadverse party, and if the power is for the
4 benefit of the decedent, creditors of the decedent, the decedent's estate or creditors
5 of the decedent's estate.

6 (b) The amount included under par. (a) 3. is the value of the property subject
7 to the power of appointment if the power of appointment is over property, the value
8 of the property that produces or produced the income if the power of appointment is
9 over income or the power valued at the higher amount if the power of appointment
10 is over both income and property. The value is limited by the extent to which the
11 power of appointment was exercisable at the decedent's death or the property passed
12 at the decedent's death by exercise, release, lapse, default or otherwise.

13 (4) DEFERRED MARITAL PROPERTY TRANSFERRED WITHIN 2 YEARS PRIOR TO DEATH.

14 (a) In this subsection, termination occurs:

15 1. With respect to a right or interest in property, when the right or interest
16 terminates by the terms of the governing instrument or when the decedent transfers
17 or relinquishes the right or interest.

18 2. With respect to a power of appointment over property, when the power
19 terminates by exercise, release, lapse, default or otherwise.

20 3. With respect to a power of appointment under sub. (2) (d), when the power
21 terminates by exercise or release.

22 (b) The augmented deferred marital property estate includes the value of any
23 deferred marital property transferred by the decedent within the 2 years
24 immediately preceding the decedent's death, including the following:

SENATE BILL 368

1 1. Deferred marital property that passed as a result of the termination of a right
2 or interest in, or power of appointment over, property that would have been included
3 in the augmented deferred marital property estate under subs. (2) (a), (b) or (d) or
4 (3), if the right, interest or power had not terminated until the decedent's death. The
5 amount included is the value of the property that would have been included if the
6 property were valued at the time the right, interest or power terminated.

7 2. Transfers by the decedent of or relating to the deferred marital property
8 component of an insurance policy on the life of the decedent, if the proceeds would
9 have been included under sub. (2) (c) had the transfer not occurred. The amount
10 included is the value of the insurance proceeds to the extent that they were payable
11 at the decedent's death.

12 3. Any transfer of deferred marital property to the extent that it is not
13 otherwise included in the augmented deferred marital property estate. The amount
14 included is the value of the property at the time of the transfer, but only to the extent
15 that the aggregate transfers to any one donee in either of the 2 years exceeded
16 \$10,000.

17 **SECTION 193.** 861.04 of the statutes is created to read:

18 **861.04 Augmented deferred marital property estate: surviving**
19 **spouse's property and transfers to others.** (1) Subject to s. 861.05, the
20 augmented deferred marital property estate includes the value of any deferred
21 marital property that would have been included under s. 861.03 had the surviving
22 spouse been the decedent.

23 (2) Valuation of an interest under this section shall take into account the fact
24 that the decedent predeceased the spouse. Subject to s. 861.05 (2), the surviving
25 spouse shall be treated as having died on the date of the decedent's death.

SENATE BILL 368

1 **SECTION 194.** 861.05 of the statutes is repealed and recreated to read:

2 **861.05 Augmented deferred marital property estate: calculation of**
3 **property interests. (1) EXCLUSIONS.** The following are not included in the
4 augmented deferred marital property estate:

5 (a) Transfers of deferred marital property to the extent that the decedent
6 received full or partial consideration for the transfer in money or money's worth.

7 (b) Transfers under the U.S. social security system.

8 (c) Transfers of deferred marital property to persons other than the surviving
9 spouse, with the written joinder or written consent of the surviving spouse.

10 (d) Transfers of deferred marital property to the surviving spouse under s.
11 861.33 or 861.41.

12 **(2) VALUATION.** (a) Property included in the augmented deferred marital
13 property estate under s. 861.03 (1), (2) (c) and (4) (b) 2. is valued as of the date of the
14 decedent spouse's death.

15 (b) Property included under s. 861.03 (2) (a), (b) and (d) and (3) is valued
16 immediately before the decedent spouse's death.

17 (c) Property included under s. 861.03 (4) (b) 1. is valued as of the date that the
18 right, interest or power terminated.

19 (d) Property included under s. 861.03 (4) (b) 3. is valued as of the date of the
20 transfer.

21 (e) If deferred marital property is commingled with other types of property but
22 the deferred marital property component can be identified, only that component is
23 valued.

24 (f) The value of property included in the augmented deferred marital property
25 estate includes the commuted value of any present or future interest in deferred

SENATE BILL 368

1 marital property and the commuted value of deferred marital property payable
2 under any trust, life insurance settlement option, annuity contract, public or private
3 pension, disability compensation, death benefit or retirement plan or any similar
4 arrangement.

5 **(3) REDUCTION FOR EQUITABLE PROPORTION OF EXPENSES AND ENFORCEABLE CLAIMS.**
6 The value of deferred marital property included in the augmented deferred marital
7 property estate under s. 861.03 or 861.04 shall be reduced by an equitable proportion
8 of funeral and burial expenses, administrative expenses, other charges and fees and
9 enforceable claims.

10 **(4) OVERLAPPING APPLICATION; NO DOUBLE INCLUSION.** If the same property could
11 be included in the augmented deferred marital property estate under more than one
12 provision of s. 861.03 or 861.04, the property is included only once, and it is included
13 under the provision that yields the greatest value.

14 **SECTION 195.** 861.06 of the statutes is created to read:

15 **861.06 Satisfaction of deferred marital property elective share. (1)**
16 **DEFINITION.** In this section, "property transferred to the surviving spouse" includes
17 outright transfers that have been disclaimed by the surviving spouse. The term does
18 not include transfers in trust that have been disclaimed by the surviving spouse,
19 unless the surviving spouse had a general power of appointment over the property
20 in the trust during his or her lifetime or an interest in the trust after the disclaimer.

21 **(2) INITIAL SATISFACTION OF DEFERRED MARITAL PROPERTY ELECTIVE SHARE.** If the
22 surviving spouse makes the election under s. 861.02, the following categories of
23 property are used first to satisfy the elective share amount:

24 (a) All property included in the augmented deferred marital property estate
25 under s. 861.04.

SENATE BILL 368

1 (b) All marital, individual, deferred marital or deferred individual property,
2 transferred to the surviving spouse:

3 1. From the decedent's probate estate, other than property transferred under
4 s. 861.33 or 861.41, and other than property transferred to the surviving spouse
5 under s. 861.31 or 861.35 except as ordered by the court under s. 861.31 (4) or 861.35
6 (4).

7 2. By nonprobate transfer at the decedent's death.

8 3. By operation of any state or federal law, other than transfers under the U.S.
9 social security system.

10 4. By the decedent at any time during the decedent's life, except that the
11 following shall be excluded:

12 a. The first \$5,000 of the value of the gifts from the decedent to the surviving
13 spouse each year.

14 b. Gifts received from the decedent that the surviving spouse can show were
15 subsequently and gratuitously transferred in a manner that, had they been the
16 deferred marital property of the surviving spouse, would not have been included in
17 the augmented deferred marital property estate under s. 861.04.

18 **(3) UNSATISFIED BALANCE.** After the property under sub. (2) has been applied
19 toward satisfaction of the deferred marital property elective share amount, the
20 remainder of the elective share amount shall be satisfied proportionally from
21 transfers to persons other than the surviving spouse of property included in the
22 augmented deferred marital property estate under s. 861.03 (1), (2), (3) or (4) (b) 2.

23 **(4) REMAINING UNSATISFIED BALANCE.** After the property under subs. (2) and (3)
24 has been applied toward satisfaction of the deferred marital property elective share
25 amount, the remainder of the elective share amount shall be satisfied proportionally

SENATE BILL 368

1 from transfers to persons other than the surviving spouse of property included in the
2 augmented deferred marital property estate under s. 861.03 (4) (b) 1. or 3.

3 **(5) EQUITABLE ADJUSTMENT OF SHARES.** If all or part of a prorated share under
4 sub. (2), (3) or (4) is uncollectible, the court may increase the prorated liability of
5 recipients described under the same or another of the 3 subsections if all of the
6 following conditions are satisfied:

7 (a) The court finds that an equitable adjustment is necessary to avoid hardship
8 for the surviving spouse.

9 (b) No recipient or donee of a recipient is liable for an amount greater than the
10 value of the deferred marital property subject to the election that was received.

11 **SECTION 196.** 861.07 of the statutes is repealed and recreated to read:

12 **861.07 Personal liability of recipients. (1) DEFINITION.** In this section,
13 “proceeds” includes:

14 (a) The consideration, in money or property, received in exchange for the
15 property that is the subject of the transfer.

16 (b) Property acquired with the consideration received in exchange for the
17 property that is the subject of the transfer.

18 **(2) PERSONS LIABLE.** The following persons are liable to make a prorated
19 contribution toward satisfaction of the surviving spouse’s deferred marital property
20 elective share:

21 (a) Original recipients of the decedent’s transfers of deferred marital property
22 to others, irrespective of whether the recipient has the property or its proceeds.

23 (b) Donees of the recipients under par. (a) if the donees have the property or its
24 proceeds. If a donee has neither the property nor its proceeds but knew or should

SENATE BILL 368

1 have known of the liability under this section, the donee remains liable for his or her
2 share of the prorated contribution.

3 (3) **MODE OF SATISFACTION.** (a) Subject to par. (b), a person who is liable under
4 sub. (2) may either give up the proportional part of the decedent's transfers to him
5 or her or pay the value of the amount for which he or she is liable.

6 (b) On petition of the surviving spouse showing that the mode of satisfaction
7 chosen in par. (a) will create a hardship for the surviving spouse, the court may order
8 that a different mode of satisfaction be used.

9 (4) **EFFECT OF FEDERAL PREEMPTION.** If any provision of this subchapter is
10 preempted by federal law with respect to any property interest or benefit that is
11 included under s. 861.03 and that would pass but for that preemption to a person
12 other than the surviving spouse, the recipient, unless he or she is a recipient for
13 value, is subject to subs. (1) to (3).

14 **SECTION 197.** 861.08 of the statutes is created to read:

15 **861.08 Proceeding for election; time limit.** (1) **GENERALLY.** Except as the
16 time may be extended under sub. (3), in order to make the election, the surviving
17 spouse shall, within 6 months after the date of the decedent's death, do all of the
18 following:

19 (a) File a petition for the election with whichever of the following applies:

20 1. The court that has jurisdiction of the probate proceedings relating to the
21 decedent's estate if a judicial proceeding has been commenced.

22 2. The court that has jurisdiction of probate proceedings relating to decedents'
23 estates located in the county of the decedent's residence if no judicial proceeding has
24 commenced.

SENATE BILL 368

1 (b) Mail or deliver a copy of the petition to the personal representative, if any,
2 of the decedent's estate.

3 **(2) NOTIFICATION OF INTERESTED PARTIES.** The surviving spouse shall give notice,
4 in the manner provided in ch. 879, of the time and place set for hearing the petition
5 to any persons who may be adversely affected by the election.

6 **(3) EXTENSION OF TIME FOR ELECTION.** (a) Subject to par. (b), the court may grant
7 the surviving spouse an extension for making an election if the surviving spouse
8 petitions the court for an extension, gives notice as specified in sub. (2) and shows
9 cause for an extension.

10 (b) The petition for extension of the time for making an election must be filed
11 within 6 months after the decedent's death, unless the court finds all of the following:

12 1. That the surviving spouse was prevented from filing the action or naming
13 a particular interested party for reasons beyond his or her control.

14 2. That failure to extend the time for making an election will result in hardship
15 for the surviving spouse.

16 **(4) WITHDRAWAL OF ELECTION.** The surviving spouse may withdraw the petition
17 for an election at any time before the probate court has entered the final
18 determination of the distribution of the decedent's estate.

19 **(5) COURT DETERMINATION OF LIABILITY.** (a) After notice and hearing, the court
20 shall determine the deferred marital property elective share amount and shall
21 determine the property that satisfies that amount under ss. 861.06 and 861.07.

22 (b) If the personal representative does not hold the money or property included
23 in the augmented deferred marital property estate, the court shall determine the
24 liability of any person or entity that has any interest in the money or property or that
25 holds that money or property.

SENATE BILL 368

1 (c) The surviving spouse may choose to seek relief from fewer than all
2 recipients. However, any such action shall not cause any other recipient's liability
3 to exceed the amount that he or she would have had to pay if all recipients had paid
4 a prorated share.

5 (6) SUITS AUTHORIZED. An order or judgment of the court may be enforced in a
6 suit for contribution or payment in other courts of this state or other jurisdictions.

7 **SECTION 198.** 861.09 of the statutes is repealed and recreated to read:

8 **861.09 Right of election by or on behalf of surviving spouse.** The
9 surviving spouse must be living in order for an election to be filed. If the surviving
10 spouse does not personally file the election, it may be filed on the surviving spouse's
11 behalf by the spouse's conservator, guardian or guardian ad litem, or by an agent of
12 the spouse acting under a power of attorney.

13 **SECTION 199.** 861.10 of the statutes is created to read:

14 **861.10 Waiver of right to elect; failure to elect. (1) RIGHT TO ELECT MAY BE**
15 **WAIVED.** The right to elect a deferred marital property elective share may be waived
16 by the surviving spouse in whole or in part. The waiver may take place before or after
17 marriage. The waiver shall be contained in a marital property agreement that is
18 enforceable under s. 766.58 or in a signed document filed with a court described in
19 s. 861.08 (1) (a) after the decedent's death.

20 **(2) WAIVER OF "ALL RIGHTS".** Unless the waiver provides otherwise, a waiver of
21 "all rights", or equivalent language, in the property or estate of a present or
22 prospective spouse, or in a complete property settlement entered into because of
23 separation or divorce, is a waiver of all rights in the deferred marital property
24 elective share.

SENATE BILL 368

1 **(3) FAILURE TO ELECT.** Failure of a surviving spouse to elect is not a transfer of
2 property and is not a gift from the surviving spouse to the decedent spouse's probate
3 estate or to the beneficiaries of other transfers.

4 **SECTION 200.** 861.11 of the statutes is repealed and recreated to read:

5 **861.11 Protection of payers and other 3rd parties. (1) PAYER NOT LIABLE**
6 UNTIL NOTICE RECEIVED. (a) Upon a beneficiary's request for payment, a payer or other
7 3rd party who has received satisfactory proof of the decedent's death and who has not
8 received written notice that the surviving spouse or his or her representative intends
9 to file a petition for the deferred marital property elective share or that a petition for
10 the election has been filed is not liable for any of the following:

11 1. Causing any payment, item of property or other benefit included in the
12 augmented deferred marital property estate under s. 861.03, to transfer directly to
13 the beneficiary designated in a governing instrument.

14 2. Any other action in good faith reliance on the validity of a governing
15 instrument.

16 (b) A payer or other 3rd party is liable for payments made or other actions taken
17 after receipt of written notice of the intent to file a petition for the elective share or
18 written notice that a petition for the elective share has been filed.

19 **(2) METHOD OF NOTICE TO PAYERS.** A written notice of the intent to file a petition
20 for the election or written notice that a petition for the election has been filed shall
21 fulfill one of the following requirements:

22 (a) Be mailed to the payer's or other 3rd party's main office or home by
23 registered or certified mail, return receipt requested.

24 (b) Be served upon the payer or other 3rd party in the same manner as a
25 summons in a civil action.

SENATE BILL 368

1 **(3) OPTIONAL PAYMENT OF PROCEEDS TO COURT.** (a) Upon receipt of written notice
2 of the intent to file, or the filing of, a petition for the election, a payer or other 3rd
3 party may pay any amount owed or transfer or deposit any item of property to or with
4 whichever of the following applies:

5 1. The court that has jurisdiction of the probate proceedings relating to the
6 decedent's estate if proceedings have been commenced.

7 2. The court that has jurisdiction of probate proceedings relating to decedents'
8 estates located in the county of the decedent's residence, if no judicial proceeding has
9 commenced.

10 (b) Payments, transfers or deposits made to the court discharge the payer or
11 other 3rd party from all claims for amounts paid or the value of property transferred
12 or deposited.

13 (c) The court shall hold the funds or items of property. After the court makes
14 its determination under s. 861.08 (5), it shall order disbursement in accordance with
15 that determination. The court shall order disbursement to the beneficiary
16 designated in the governing instrument if either of the following conditions applies:

17 1. No petition is filed in the court within the specified time under s. 861.08 (1).

18 2. A petition was filed but withdrawn under s. 861.08 (4) with prejudice.

19 (d) If payments have been made to the court or if property has been deposited
20 with the court under par. (a), the court may order that all or part of the payments or
21 property be paid to the beneficiary who is designated in the governing instrument,
22 upon that beneficiary's petition to the court. Those payments shall be in an amount
23 and subject to conditions consistent with this subchapter.

24 **SECTION 201.** 861.13 of the statutes is repealed.

SENATE BILL 368

1 **SECTION 202.** Subchapter III (title) of chapter 861 [precedes 861.17] of the
2 statutes is created to read:

3 **CHAPTER 861**

4 SUBCHAPTER III

5 OTHER RIGHTS,

6 ALLOWANCES AND EXEMPTIONS

7 **SECTION 203.** 861.21 of the statutes is created to read:

8 **861.21 Assignment of home to surviving spouse. (1) DEFINITIONS.** In this
9 section:

10 (a) "Governing instrument" has the meaning given in s. 854.01.

11 (b) "Home" means any dwelling in which the decedent had an interest and that
12 at the time of the decedent's death the surviving spouse occupies or intends to occupy.
13 If there are several such dwellings, any one may be designated by the surviving
14 spouse. "Home" includes a house, a mobile home, a duplex or multiple apartment
15 building one unit of which is occupied by the surviving spouse and a building used
16 in part for a dwelling and in part for commercial or business purposes. "Home"
17 includes all of the surrounding land, unless the court sets off part of the land as
18 severable from the remaining land under sub. (5).

19 **(2) IF MARITAL PROPERTY INTEREST IN HOME.** Subject to subs. (4) and (5), if a
20 married decedent has a marital property interest in a home, the decedent's entire
21 interest in the home shall be assigned to the surviving spouse if the surviving spouse
22 petitions the court requesting such a distribution and if a governing instrument does
23 not provide a specific transfer of the decedent's interest in the home to someone other
24 than the surviving spouse. The surviving spouse shall file the petition within 6
25 months after the decedent's death, unless the court extends the time for filing.

SENATE BILL 368

1 **(3) IF INTEREST IN HOME IN INTESTATE ESTATE.** Subject to subs. (4) and (5), if the
2 intestate estate includes an interest in a home, the decedent's entire interest shall
3 be assigned to the surviving spouse if the surviving spouse petitions the court
4 requesting such a distribution. The surviving spouse shall file the petition within
5 6 months after the decedent's death, unless the court extends the time for filing.

6 **(4) PAYMENT BY SURVIVING SPOUSE.** The court shall assign the interest in the
7 home to the surviving spouse upon payment of the value of the interest that does not
8 pass to the surviving spouse under intestacy or under the governing instrument.
9 Payment shall be made to the fiduciary holding title to the interest. The surviving
10 spouse may use assets due him or her from the fiduciary to satisfy all or part of the
11 payment in kind. Unless the court extends the time, the surviving spouse shall have
12 one year from the decedent's death to pay the value of the assigned interest.

13 **(5) SEVERANCE OF HOME FROM SURROUNDING LAND.** On petition of the surviving
14 spouse or of any interested person that part of the land is not necessary for dwelling
15 purposes and that it would be inappropriate to assign all of the surrounding land as
16 the home, the court may set off for the home as much of the land as is necessary for
17 a dwelling. In determining how much land should be set off, the court shall take into
18 account the use and marketability of the parcels set off as the home and the
19 remaining land.

20 **SECTION 204.** 861.31 (1) of the statutes is renumbered 861.31 (1m) and
21 amended to read:

22 861.31 **(1m)** The court may, without notice or on such notice as the court
23 directs, order payment by the personal representative or special administrator of an
24 allowance as it determines necessary or appropriate for the support of the surviving
25 spouse and any ~~minor dependent~~ children of the decedent during the administration

SENATE BILL 368

1 of the estate. In making or denying the order the court shall consider the size of the
2 probate estate, other resources available for support, existing standard of living, and
3 any other factors it considers relevant.

4 **SECTION 205.** 861.31 (1c) of the statutes is created to read:

5 861.31 (1c) In this section, “dependent child” means any of the following:

6 (a) A minor child of the decedent.

7 (b) An adult child of the decedent who was being supported by the decedent at
8 the time of the decedent’s death.

9 **SECTION 206.** 861.31 (2) of the statutes is amended to read:

10 861.31 (2) The allowance may be made to the spouse for support of the spouse
11 and any ~~minor dependent~~ children of the decedent, or separate allowances may be
12 made to the spouse and to the ~~minor dependent~~ children of the decedent or their
13 guardian ~~if the minor children do not reside with the surviving spouse or if for any~~
14 ~~other reason, if any, if~~ the court finds separate allowances advisable. If there is no
15 surviving spouse the allowance may be made to the ~~minor dependent~~ children of the
16 decedent or to their guardian, if any.

17 **SECTION 207.** 861.31 (4) of the statutes is renumbered 861.31 (4) (intro.)
18 amended to read:

19 861.31 (4) (intro.) The court may direct that the allowance be charged against
20 income or principal, either as an advance or otherwise, but in no event may an
21 allowance for support of ~~minor dependent~~ children of the decedent be charged
22 against the income or principal interest of the surviving spouse. The court may direct
23 that the allowance for support of the surviving spouse, not including any allowance
24 for support of ~~minor dependent~~ children, be applied ~~against any~~ in satisfaction of any
25 of the following:

SENATE BILL 368

1 **(b)** Any right of the surviving spouse to elect under ~~ss. s.~~ s. 861.02 (1) and 861.03.

2 **SECTION 208.** 861.31 (4) (a) of the statutes is created to read:

3 861.31 (4) (a) Any entitlement of the surviving spouse under s. 853.11 (2).

4 **SECTION 209.** 861.33 (title) of the statutes is amended to read:

5 **861.33** (title) **Selection of personalty by surviving spouse or children.**

6 **SECTION 210.** 861.33 (1) (a) (intro.) of the statutes is amended to read:

7 861.33 (1) (a) (intro.) Subject to this section, in addition to all allowances and
8 distributions, the surviving spouse, or if there is no surviving spouse the decedent's
9 children, may file with the court a written selection of the following personal
10 property, which shall thereupon be transferred to the spouse or children by the
11 personal representative:

12 **SECTION 211.** 861.33 (1) (a) 4. of the statutes is amended to read:

13 861.33 (1) (a) 4. Other tangible personalty not used in trade, agriculture or
14 other business, not to exceed ~~\$1,000~~ \$3,000 in inventory value.

15 **SECTION 212.** 861.33 (1) (b) of the statutes is amended to read:

16 861.33 (1) (b) The selection in par. (a) may not include items specifically
17 bequeathed except that the surviving spouse or children may in every case select the
18 normal household furniture, furnishings and appliances necessary to maintain the
19 home. For this purpose antiques, family heirlooms and collections which are
20 specifically bequeathed are not classifiable as normal household furniture or
21 furnishings.

22 **SECTION 213.** 861.33 (1) (c) of the statutes is created to read:

23 861.33 (1) (c) If there is no surviving spouse and the selection is being made
24 by fewer than all of the decedent's children, the child or children selecting the

SENATE BILL 368

1 property must have the written consent of all of the other children, or the selection
2 must be approved by the court.

3 **SECTION 214.** 861.33 (2) of the statutes is amended to read:

4 861.33 (2) If it appears that claims may not be paid in full, the court may upon
5 petition of any creditor limit the transfer of personalty to the spouse or children
6 under this section to items not exceeding ~~\$3,000~~ \$5,000 in aggregate inventory value
7 until such time as claims are paid in full or the court otherwise orders; or the court
8 may require the spouse or children to retransfer property in excess of ~~\$3,000~~ \$5,000
9 or, at the option of the spouse or children, pay the excess in value over this amount.

10 **SECTION 215.** 861.33 (3) of the statutes is amended to read:

11 861.33 (3) The surviving spouse or children may select items not specifically
12 bequeathed of the type specified under sub. (1) (a) 4. exceeding in value the ~~\$1,000~~
13 \$3,000 limit or obtain the transfer of items exceeding the limit set by the court under
14 sub. (2), by paying to the personal representative the excess of inventory value over
15 the respective limit.

16 **SECTION 216.** 861.33 (4) of the statutes is amended to read:

17 861.33 (4) The Subject to sub. (1) (c), the personal representative has power,
18 without court order, to execute appropriate documents to effect transfer of title to any
19 personal property selected by the spouse or children under this section. A person
20 may not question the validity of the documents of transfer or refuse to accomplish
21 the transfer on the grounds that the personal representative is also the surviving
22 spouse or the only child of the decedent.

23 **SECTION 217.** 861.35 (title) of the statutes is amended to read:

24 **861.35 (title) Special allowance for support of spouse and support and**
25 **education of ~~minor~~ dependent children.**

SENATE BILL 368

1 **SECTION 218.** 861.35 (1) of the statutes is renumbered 861.35 (1m), and 861.35
2 (1m) (intro.) and (b), as renumbered, are amended to read:

3 861.35 **(1m)** (intro.) If the decedent is survived by a spouse or by ~~minor~~
4 children, the court may order an allowance for the support and education of each
5 ~~minor child until he or she reaches a specified age, not to exceed 18,~~ dependent child
6 and for the support of the spouse. This allowance may be made whether the estate
7 is testate or intestate. If the decedent is not survived by a spouse, the court also may
8 allot directly to ~~the minor~~ any of the dependent children household furniture,
9 furnishings and appliances. No allowance may be made under this section if any of
10 the following apply:

11 (b) In the case of ~~minor~~ dependent children, if the surviving spouse is legally
12 responsible for support and education and has ample means to provide them in
13 addition to his or her own support.

14 **SECTION 219.** 861.35 (1c) of the statutes is created to read:

15 861.35 **(1c)** In this section, “dependent child” has the meaning given in s.
16 861.31 (1c).

17 **SECTION 220.** 861.35 (2) of the statutes is amended to read:

18 861.35 **(2)** The court may set aside property to provide an allowance and may
19 appoint a trustee to administer the property, subject to the continuing jurisdiction
20 of the court. If ~~a child dies or reaches 18, or if at any time the property held by the~~
21 trustee is no longer required for the support of the spouse or the support and
22 education of ~~the minor~~ any dependent child, any remaining property is to be
23 distributed by the trustee as directed by the court in accordance with the terms of
24 the decedent’s will or to the heirs of the decedent in intestacy or to satisfy unpaid
25 claims of the decedent’s estate.

SENATE BILL 368

1 **SECTION 221.** 861.35 (3) of the statutes is renumbered 861.35 (3) (intro.) and
2 amended to read:

3 861.35 (3) (intro.) In making an allowance under this section, the court shall
4 consider the all of the following:

5 (a) The effect on claims under s. 859.25 and. The court shall balance the needs
6 of the spouse or ~~minor child~~ dependent children against the nature of the creditors'
7 claims in setting the amount allowed hereunder. ~~The court shall also consider the~~
8 under this section.

9 (b) The size of the estate, other,

10 (c) Other resources available for support, ~~the,~~

11 (d) The existing standard of living and any,

12 (f) Any other factors it that the court considers relevant.

13 (4) The court may direct that the allowance to the surviving spouse, not
14 including any allowance for the support and education of ~~minor~~ dependent children,
15 be applied against any in satisfaction of any of the following:

16 (b) Any right of the surviving spouse to elect under ss. s. 861.02 (1) and 861.03.

17 **SECTION 222.** 861.35 (3) (e) of the statutes is created to read:

18 861.35 (3) (e) Whether the provisions of a marital property agreement will
19 create a hardship for the surviving spouse.

20 **SECTION 223.** 861.35 (4) (a) of the statutes is created to read:

21 861.35 (4) (a) Any entitlement of the surviving spouse under s. 853.11 (2).

22 **SECTION 224.** 861.41 (3) and (4) of the statutes are repealed.

23 **SECTION 225.** 861.43 of the statutes is created to read:

24 **861.43 Authority and powers of conservator, guardian or agent.** A
25 conservator, guardian or guardian ad litem of the spouse or of a child of the decedent,

SENATE BILL 368

1 or an agent of the spouse or of a child of the decedent acting under a power of attorney,
2 may on behalf of the spouse or child exercise any of the rights, apply for any of the
3 allowances or make any of the selections that apply to the spouse or child under this
4 subchapter.

5 **SECTION 226.** 863.11 of the statutes is repealed and recreated to read:

6 **863.11 Order in which assets appropriated; abatement.** Shares of
7 distributees abate in accordance with the rules under s. 854.18.

8 **SECTION 227.** 863.13 of the statutes is repealed and recreated to read:

9 **863.13 No exoneration of encumbered property.** Specifically devised
10 property that is subject to a mortgage or other encumbrance is subject to the rules
11 under s. 854.05.

12 **SECTION 228.** 863.37 (1) of the statutes is amended to read:

13 863.37 (1) If the laws, executive orders or regulations of the United States
14 prohibit payment, conveyance, transfer, assignment or delivery of property or
15 interest therein to a legatee, devisee, ward or beneficiary of an estate or trust, or to
16 any person on his or her behalf, the court, after notice to the person under s. 879.03,
17 may, by judgment or decree, authorize such disposition of the property or interest
18 therein, as is or may be permissible under or in conformity with the laws, executive
19 orders or regulations of the United States.

20 **SECTION 229.** 880.32 of the statutes is amended to read:

21 **880.32 Notes and mortgages of minor veterans.** Notwithstanding any
22 provision of this chapter or any other law to the contrary, any minor who served in
23 the active armed forces of the United States at any time after August 27, 1940, and
24 the husband or wife of such minor may execute in his or her own right, notes or
25 mortgages, the payment of which is guaranteed or insured by the U.S. department

SENATE BILL 368

1 of veterans affairs or the federal housing administrator under the servicemen's
2 readjustment act of 1944 or the national housing act or any acts supplementary
3 thereto or amendatory thereof. In connection with such transactions, such minors
4 may sell, release or convey such mortgaged property ~~or any interest therein,~~ and
5 litigate or settle controversies arising therefrom, including the execution of releases,
6 deeds and other necessary papers or instruments. Such notes, mortgages, releases,
7 deeds and other necessary papers or instruments when so executed shall not be
8 subject to avoidance by such minor or the husband or wife of such minor upon either
9 or both of them attaining the age of 18 because of the minority of either or both of
10 them at the time of the execution thereof.

11 **SECTION 230.** 880.695 (1) of the statutes is amended to read:

12 880.695 (1) A person nominated under s. 880.62 or designated under s. 880.65
13 as custodian may decline to serve by delivering a valid disclaimer under s. ~~701.27,~~
14 ~~in the case of a nontestamentary disclaimer, or under s. 853.40 if other than a~~
15 ~~nontestamentary disclaimer, 854.13~~ to the person who made the nomination or to the
16 transferor or the transferor's legal representative. If the event giving rise to a
17 transfer has not occurred and no substitute custodian able, willing and eligible to
18 serve was nominated under s. 880.62, the person who made the nomination may
19 nominate a substitute custodian under s. 880.62; otherwise the transferor or the
20 transferor's legal representative shall designate a substitute custodian at the time
21 of the transfer, in either case from among the persons eligible to serve as custodian
22 for that kind of property under s. 880.65 (1). The custodian so designated has the
23 rights of a successor custodian.

24 **SECTION 231.** 895.43 of the statutes is repealed and recreated to read:

